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Addendum

Annex II

Rules of Procedure and Evidence

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Rules of Procedure and Evidence

(Prepared on the basis of the discussion papers proposed by the Coordinators)

Part[1] 2*
Jurisdiction, admissibility and applicable law

Rule relating to article[2] 11 (Jurisdiction *ratione temporis*) and article 12 (Preconditions to the exercise of jurisdiction)

Rule 2.1
Declaration provided for in article 12, paragraph 3

(a) The Registrar, at the request of the Prosecutor, may inquire of a State that is not a Party to the Statute or that has become a Party to the Statute after its entry into force, on a confidential basis, whether it intends to make the declaration provided for in article 12, paragraph 3.

(b) When a State lodges or declares to the Registrar its intent to lodge a declaration with the Registrar pursuant to article 12, paragraph 3, or when the Registrar acts pursuant to paragraph (a) above, the Registrar shall inform the State concerned that the declaration under article 12, paragraph 3, has as a consequence the acceptance of jurisdiction with respect to the crimes referred to in article 5 of relevance to the situation and the provisions of Part 9 of the Statute, together with rules X to XX[3] concerning States Parties shall apply.

Rule relating to article 13 (b) (Exercise of jurisdiction) and article 14 (Referral of a situation by a State Party)

Rule 2.2
Referral of a situation to the Prosecutor[4]

A referral of a situation to the Prosecutor shall be in writing.

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* The Preparatory Commission, at its fourth session, considered rules relating to Part 2.

[1] In the present document "Part" refers to the Parts of the Rome Statute.

[2] In the present document "article" in the headings refers to articles of the Rome Statute.

[3] Rules X to XX are the rules concerning the implementation of Part 9.

[4] A new rule, 2.0, was proposed to streamline the rules in this Part. The rule proposed is:

> **"Rule 2.0**
> "All submissions to, from or between the Organs of the Court according to the rules of this Part shall be in writing, unless otherwise provided."

Further discussion is required. If this rule is accepted, consequential changes would be needed for other rules in this Part.

Rules relating to article 15 (Prosecutor)

Rule 2.3
Information provided to the Prosecutor under article 15, paragraphs 1 and 2

In the event of information submitted under article 15, paragraph 1, or of oral or written testimony pursuant to article 15, paragraph 2, at the seat of the Court, the Prosecutor shall protect the confidentiality of any information or take any other necessary measures pursuant to his or her duties under the Statute.

Rule 2.4
Testimony under article 15, paragraph 2

(a) The provisions of rules 5.9 and 5.10 shall be applicable, *mutatis mutandis*, to testimony received by the Prosecutor pursuant to article 15, paragraph 2.

(b) When the Prosecutor considers that there is a serious risk that it might not be possible for the testimony to be taken subsequently, he or she may request the Pre-Trial Chamber to take such measures as may be necessary to ensure the efficiency and integrity of the proceedings and, in particular, to appoint a counsel or a judge from the Pre-Trial Chamber to be present during the taking of the testimony in order to protect the rights of the defence. If the testimony is subsequently presented in the proceedings, the relevant Chamber shall, in evaluating its probative value under article 69 (4), take into account the circumstances surrounding the taking of the testimony and any impact this may have on the rights of the defence.

(c) The provisions of the present rule shall be applicable in the case provided for in article 53, paragraph 1, and rule 5.2.

Rule 2.5
Decision and notification under article 15, paragraph 6

(a) In the event of a decision under article 15, paragraph 6, the Prosecutor shall promptly ensure that notice is provided, including reasons for his or her decision, in a manner that prevents any danger to the safety, well-being and privacy of those who provided information to him or her under article 15, paragraphs 1 and 2, or the integrity of investigations or proceedings.

(b) The notice shall also advise of the possibility of submitting further information regarding the same situation in the light of new facts and evidence.

Provisions on participation of victims in proceedings under Part 2 of the Statute[5]

Rule 2.6
Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation under article 15

(a) When the Prosecutor intends to seek authorization from the Pre-Trial Chamber to initiate an investigation pursuant to article 15, paragraph 3, the Prosecutor shall inform victims, known to him or her or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses. In performing these functions, the Prosecutor may seek the assistance of the Victims and Witnesses Unit as appropriate.

(b) A request by the Prosecutor shall be in writing. Following information given in accordance with paragraph (a), victims may make representations in writing to the Pre-Trial Chamber within such time limit as set forth in the Regulations.

(c) The Pre-Trial Chamber, in deciding on the procedure to be followed, may request additional information from the Prosecutor and from any of the victims who have made representations, and, if it considers it appropriate, may hold a hearing.

(d) The Pre-Trial Chamber shall issue its decision, including its reasons, as to whether to authorize the commencement of the investigation in accordance with article 15, paragraph 4, with respect to all or any part of the request by the Prosecutor. The Chamber shall provide notice of the decision to victims who have made representations.

(e) The above procedure shall also apply to a new request to the Pre-Trial Chamber pursuant to article 15, paragraph 5.

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[5] The rules relating to Part 4 of the Statute may contain provisions on the Registrar's management of victims who have expressed an intention to participate in proceedings before the Court. The following provision could be considered:

"For fulfilment of the functions set forth in rule 2.6, paragraph (a), and rule 2.15, paragraph (a), the Registrar may keep a special register for victims who have expressed their intention to participate in relation to a specific investigation."

Other views in respect of the necessity of this provision and its content were also expressed.

Rules relating to article 17 (Issues of admissibility), article 18 (Preliminary rulings regarding admissibility) and article 19 (Challenges to the jurisdiction of the Court or the admissibility of a case)

Rule 2.7
Information provided under article 17

In considering the matters referred to in article 17, paragraph 2, and in the context of the circumstances of the case, the Court may consider, *inter alia*, information that the State referred to in article 17 (1) may choose to bring to the attention of the Court showing that its courts meet international standards for the independent and impartial prosecution of similar conduct, or that the State has confirmed in writing to the Prosecutor that the case is being investigated or prosecuted.

Rule 2.8
Notification provided for in article 18, paragraph 1

(a) Subject to the limitations provided for in article 18, paragraph 1, the notification shall contain information about the acts that may constitute crimes referred to in article 5, relevant for the purposes of article 18, paragraph 2.

(b) A State may request additional information from the Prosecutor to assist it in the application of article 18, paragraph 2. Such a request shall not affect the one-month deadline provided for in article 18, paragraph 2, and shall be responded to by the Prosecutor on an expedited basis.

Rule 2.9
Deferral provided for in article 18, paragraph 2

When a State requests a deferral pursuant to article 18, paragraph 2, that State shall make this request in writing and provide information concerning its investigation, taking into account article 18, paragraph 2. The Prosecutor may request additional information from that State.

Rule 2.10
Application by the Prosecutor under article 18, paragraph 2

(a) An application submitted by the Prosecutor to the Pre-Trial Chamber in accordance with article 18, paragraph 2, shall be in writing and shall contain the basis for the application. The information provided by the State under rule 2.9 shall be communicated by the Prosecutor to the Pre-Trial Chamber.

(b) The Prosecutor shall inform that State in writing when he or she makes an application to the Pre-Trial Chamber under article 18, paragraph 2, and shall include in the notice a summary of the basis of the application.

Rule 2.11
Proceedings concerning article 18, paragraph 2

(a) The Pre-Trial Chamber shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings.

(b) The Pre-Trial Chamber shall examine the Prosecutor's application and any observations submitted by a State that requested a deferral in accordance with article 18, paragraph 2, and shall consider the factors in article 17 in deciding whether to authorize an investigation.

(c) The decision and the basis for the decision of the Pre-Trial Chamber shall be communicated as soon as possible to the Prosecutor and to the State that requested a deferral of an investigation.

Rule 2.12
Application by the Prosecutor following review under article 18, paragraph 3

(a) Following a review by the Prosecutor as set forth in article 18, paragraph 3, the Prosecutor may apply to the Pre-Trial Chamber for authorization in accordance with article 18, paragraph 2. The application to the Pre-Trial Chamber shall be in writing and shall contain the basis for the application.

(b) Any further information provided by the State under article 18, paragraph 5, shall be communicated by the Prosecutor to the Pre-Trial Chamber.

(c) The proceedings shall be conducted in accordance with rules 2.10 (b) and 2.11.

Rule 2.13
Provisional measures

An application to the Pre-Trial Chamber by the Prosecutor in the circumstances provided for in article 18, paragraph 6, shall be considered ex parte and *in camera*. The Pre-Trial Chamber shall rule on an expedited basis.

Rule 2.14[6]
Proceedings under article 19

(a) A request/application made under article 19 shall be in writing and contain the basis for it.

(b) When a Chamber of the Court receives a challenge or question concerning its jurisdiction or the admissibility of a case in accordance with article 19, paragraph 2 or 3, or is acting on its own motion as provided for in article 19, paragraph 1, it shall decide on the procedure to be followed and may take

[6] This rule will need to be further discussed during the next session of the Preparatory Commission.

appropriate measures for the proper conduct of the proceedings. It may hold a hearing.

(c) The Court shall rule on any issue of jurisdiction first and then on any issue of admissibility.

Rule 2.15
Participation in proceedings pursuant to article 19, paragraph 3

(a) For the purpose of article 19, paragraph 3, the Registrar shall inform the following of any question or challenge of jurisdiction or admissibility which has arisen pursuant to article 19, paragraphs 1, 2 and 3:

(i) Those who have referred a situation pursuant to article 13;

(ii) The victims who have already communicated with the Court in relation to that case or their legal representatives.

(b) The Registrar shall provide those referred to in paragraph (a), in a manner consistent with the duty of the Court regarding the confidentiality of information, the protection of any person and the preservation of evidence, with a summary of the grounds on which the jurisdiction of the Court or the admissibility of the case has been challenged.

(c) Those receiving the information, as provided for in paragraph (a), may make representation in writing to the competent Chamber within such time limit as it considers appropriate.

Rule 2.16
Competent entity to receive challenges

If a challenge to the jurisdiction of the Court or to the admissibility of a case is made after a confirmation of the charges but before the constitution or designation of the Trial Chamber, it shall be addressed to the Presidency, which shall refer it to the Trial Chamber as soon as the latter is constituted or designated in accordance with rule 5.27.

Rule 2.17
Provisional measures

When the Prosecutor makes application to the competent Chamber in the circumstances provided for in article 19, paragraph 8, rule 2.13 shall apply.

Rule 2.18
Proceedings under article 19, paragraph 10

(a) If the Prosecutor makes a request under article 19, paragraph 10, he or she shall make the request to the Chamber that made the latest ruling on admissibility. The provisions of rules 2.14, 2.15 and 2.17 shall be applicable.

(b) The State or States whose challenge to admissibility under article 19, paragraph 2, provoked the decision of inadmissibility provided for in article 19, paragraph 10, shall be notified of the request of the Prosecutor and shall be given a time limit within which to make representations.

Rule Q. Definition of victims[7]

For the purpose of the Statute and the rules of procedure and evidence:

"Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through conduct that constitutes a crime within the jurisdiction of the Court. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. The term "victim" also includes, where appropriate, organizations or institutions that have been directly harmed.

[7] The following outline of a rule on a definition of victims is based upon the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and proposals contained in footnote 8 of document PCNICC/1999/L.5/Rev.1/Add.1. This is a working text which requires further discussion, including a discussion on the issue of non-discrimination in the application of the definition.

Part 4*
Composition and administration of the Court

4.1 Rules relating to situations that may affect the functioning of the Court

4.1.1
Removal from office and disciplinary measures

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and a Deputy Registrar shall be removed from office or shall be subjected to disciplinary measures in such cases and with such guarantees as are established in the Statute and these Rules.

4.1.1
Definition of serious misconduct and serious breach of duty

1. Serious misconduct

For the purposes of article 46, paragraph 1 (a), "serious misconduct" shall be constituted by conduct that:

(a) If it occurs in the course of official duties, involves the exercise of an activity that is incompatible with official functions, that causes or is likely to cause serious harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Disclosing facts or information that a person has acquired in the course of his or her duties, where such disclosure is seriously prejudicial to the judicial proceedings or to any person, or disclosing facts or information on a matter which is sub judice;

(ii) Concealing information or circumstances of a nature sufficiently serious to have precluded him or her from holding office;

(iii) Abuse of judicial office in order to obtain unwarranted favourable treatment from any authorities, officials or professionals; or

(b) If it occurs outside the course of official duties, is of a grave nature that causes or is likely to cause serious harm to the standing of the Court.

2. Serious breach of duty

For the purposes of article 46, paragraph 1 (a), a "serious breach of duty" shall be taken to have occurred where a person has been grossly negligent in the performance of his or her duties or has knowingly acted in contravention of those duties. This may include, *inter alia*, situations where the person:

* The Preparatory Commission, at its fourth session, considered rules relating to Part 4.

(a) Fails to comply with the duty to request to be excused, knowing that there are grounds for doing so;

(b) Repeatedly causes unwarranted delay in the initiation, prosecution or trial of cases, or in the exercise of judicial powers.

4.1.2
Definition of misconduct of a less serious nature

1. For the purposes of article 47, "misconduct of a less serious nature" shall be constituted by conduct that:

(a) If it occurs in the course of official duties, causes or is likely to cause harm to the proper administration of justice before the Court or the proper internal functioning of the Court, such as:

(i) Interfering in the exercise of functions by a person referred to in this rule;

(ii) Repeatedly failing to comply with or ignoring the requests made by the Presiding Judge of the Chamber or by the Presidency of the Court in the exercise of their lawful authority;

(iii) Failing to enforce the disciplinary measures to which the Registrar or a Deputy Registrar and other officers of the Court are subject when a judge knows or should know of a serious breach of duty on their part; or

(b) If it occurs outside the course of official duties, causes or is likely to cause harm to the standing of the Court.

2. Nothing in this rule precludes the possibility of the conduct set out in paragraph 1 (a) constituting "serious misconduct" or "serious breach of duty" for the purposes of article 46, paragraph 1 (a).

4.1.3
Receipt of complaints

1. For the purposes of article 46 (1) and article 47, any complaint concerning any conduct characterized under these rules as serious misconduct, serious breach of duty or misconduct of a less serious nature shall include the grounds on which it is based, the identity of the complainant and any relevant evidence, if available. The complaint shall remain confidential.

2. All complaints shall be transmitted to the Presidency, which may also initiate proceedings on its own motion, and which shall, pursuant to the Regulations of the Court, set aside anonymous complaints or manifestly unfounded complaints and transmit the other complaints to the competent organ. The Presidency shall be assisted in this task by one or more judges, appointed on the basis of automatic rotation, in accordance with the Regulations of the Court.

4.1.4
Procedure[8]

Common provisions on the rights of the defence

1. In any case in which removal from office under article 46 or disciplinary measures under article 47 is under consideration, the person concerned shall be so informed in a written statement.

2. The person concerned shall be afforded full opportunity to present and receive evidence, to make written submissions and to supply answers to any questions put to him or her.

3. The person may be represented by a lawyer during the process established under this rule.

Procedure in the event of a request for removal from office

1. In the case of a judge, the Registrar or a Deputy Registrar, the question of removal from office shall be put to the vote at a plenary session of the Court.

2. The Presidency shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation adopted in the case of a judge, and any decision adopted in the case of the Registrar or a Deputy Registrar.

3. The Prosecutor shall advise the President of the Bureau of the Assembly of States Parties in writing of any recommendation he or she makes in the case of a Deputy Prosecutor.

4. Where the conduct is found not to amount to serious misconduct or serious breach of duty, it may be decided in accordance with article 47 that the individual concerned has engaged in misconduct of a less serious nature and a disciplinary measure imposed.

Procedure in the event of a request for disciplinary measures

1. In the case of a judge, the Registrar or the Deputy Registrar, any decision to impose a disciplinary measure shall be taken by the Presidency.

2. In the case of the Prosecutor, any decision to impose a disciplinary measure shall be taken by an absolute majority of the Bureau of the Assembly of States Parties.

3. In the case of a Deputy Prosecutor:

(a) Any decision to give a reprimand shall be taken by the Prosecutor;

(b) Any decision to impose a pecuniary sanction shall be taken by an absolute majority of the Bureau of the Assembly of States Parties upon the recommendation of the Prosecutor;

4. Reprimands shall be recorded in writing and shall be transmitted to the President of the Bureau of the Assembly of States Parties.

[8] One delegation expressed the view that for the application of article 48 (5) on the waiver of privileges and immunities, the person concerned should be entitled to make his or her observations and be assisted by a counsel.

5. All decisions shall be taken in accordance with article 47 and rule 4.1.

Suspension from duty

Where an allegation against a person who is the subject of a complaint is of a sufficiently serious nature, the person may be suspended from duty without loss of remuneration[9] pending the final decision of the competent organ.

Sanctions

1. **Removal from office**

Once removal from office has been pronounced, it shall take effect immediately. The person concerned shall cease to form part of the Court, *inter alia*, for unfinished cases in which he or she was taking part.

2. **Disciplinary measures**

The disciplinary measures that may be imposed are:

(a) A reprimand; or

(b) A pecuniary sanction that may not exceed six months of the salary paid by the Court to the person concerned.

4.1.5
Excusing of a judge, of the Prosecutor or of a Deputy Prosecutor

1. A judge, the Prosecutor or a Deputy Prosecutor seeking to be excused from a function under the Statute shall make a request in writing to the Presidency, setting out the grounds upon which he or she should be excused.

2. The Presidency shall treat the request as confidential and shall not make public the reasons for its decision without the consent of the individual concerned.

4.1.6
Disqualification of a judge, of the Prosecutor or of a Deputy Prosecutor

1. In addition to the grounds established in article 41, paragraph 2, and article 42, paragraph 7, of the Statute, which apply to judges and to the Prosecutor or a Deputy Prosecutor respectively, the grounds for disqualification shall include, *inter alia*, the following:[10]

(a) Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the Parties;

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[9] One delegation expressed the view that the words "without loss of remuneration" should not be included in the text.

[10] It was generally understood that, under certain circumstances, nationality could be taken into consideration as a ground on which the person's impartiality might reasonably be doubted.

(b) Involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was an opposing party;

(c) Performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their representatives that, objectively, could adversely affect the required impartiality of the individual concerned;

(d) Expression of opinions, through the communications media, in writing or in public actions, that, objectively, could adversely affect the required impartiality of the individual concerned.

2. Subject to the provisions set out in article 41, paragraph 2, and article 42, paragraph 8, each request shall be made in writing as soon as there is knowledge of the grounds on which it is based. The request shall state the grounds and attach any relevant evidence, and shall be transmitted to the individual concerned, who shall be entitled to present written submissions.

3. Any question relating to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by a majority of the judges of the Appeals Chamber.

4.1.7
Duty of a judge, the Prosecutor or a Deputy Prosecutor to request to be excused

Where a judge, the Prosecutor or a Deputy Prosecutor has reason to believe that a ground for disqualification exists, he or she shall make a request to be excused and shall not wait for a request for disqualification to be made in accordance with article 41, paragraph 2, or article 42, paragraph 7, and rule 4.1.6. The request shall be made, and the Presidency shall deal with the request, in accordance with rule 4.1.5.

4.1.8
Death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar

The Presidency shall notify the President of the Bureau of the Assembly of States Parties in writing of the death of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar.

4.1.9
Resignation of a judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar

1. A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or a Deputy Registrar shall communicate his or her decision to resign in writing to the Presidency, which shall inform the President of the Bureau of the Assembly of States Parties in writing.

2. The judge, Prosecutor, Deputy Prosecutor, Registrar or a Deputy Registrar shall endeavour to give, at least six months in advance, notice of the date on which his or her resignation will take effect. Before the resignation of a judge takes effect, he or she shall make every effort to discharge his or her responsibilities in relation to unfinished business.

Rules relating to the organization of the Court

B1. Plenary sessions

Plenary sessions of the Court

1. The judges shall meet in plenary session not later than two months after their election. At that first session, after having made their solemn undertaking, in conformity with rule X, the judges shall:

(a) Elect the President and Vice-Presidents;

(b) Elect the Registrar;

(c) Adopt the Regulations;

(d) Assign judges to divisions.

2. The judges shall meet subsequently in plenary session at least once a year to exercise their functions under the Statute, these Rules and the Regulations of the Court and, if necessary, in special plenary sessions convened by the President on his or her own motion or at the request of one half of the judges.

3. The quorum for each plenary session of the Court shall be two thirds of the judges of the Court.

4. Except where another requirement is specified in the Statute or these Rules, the decisions of the plenary sessions of the Court shall be taken by the majority of the judges present. In the event of an equality of votes, the President or the judge acting in the place of the President shall have a casting vote.

B2. Election and qualifications

1. Prosecutor

Delegation of the Prosecutor's functions

Except for the inherent powers of the Prosecutor set forth in the Statute, *inter alia*, those described in articles 15 and 53, the Prosecutor or a Deputy Prosecutor may authorize staff members of the Office of the Prosecutor, other than those referred to in article 44 (4), to represent him or her in the exercise of his or her functions.[11]

[11] Some delegations were of the view that the necessity and contents of this rule will require additional consideration at the next session.

2. Registrar

Qualification and election of the Registrar and the Deputy Registrar

1. As soon as it is elected, the Presidency shall establish a list of candidates who satisfy the criteria laid down in article 43 (3) and shall transmit such a list to the Assembly of States Parties with a request for any recommendations.

2. Upon receipt of any recommendations from the Assembly of States Parties, the President shall transmit the list together with the recommendations to the plenary session of the Court.

3. As provided for in article 43 (4), the Court meeting in plenary session shall elect the Registrar by an absolute majority, taking into account any recommendations by the Assembly of States Parties. In the event that no candidate obtains an absolute majority on the first ballot, successive ballots shall be held until one candidate obtains an absolute majority.

4. If the need for a Deputy Registrar arises, the Registrar may make a recommendation to the President of the Court to that effect. The President shall convene a plenary session of the Court to decide on the matter. If the Court meeting in the plenary session decides by an absolute majority that a Deputy Registrar is to be elected, the Registrar shall submit a list of candidates to the Court.

5. The Deputy Registrar shall be elected by the Court meeting in plenary session in the same manner as the Registrar.

B3. The Office of the Prosecutor

Operation of the Office of the Prosecutor

1. In discharging his or her responsibility for the management and administration of the Office of the Prosecutor, the Prosecutor shall put in place regulations to govern the operation of the Office.

2. In preparing or amending these regulations, the Prosecutor shall consult with the Registrar on any matters that may affect the operation of the Registry.

Retention of information and evidence

The Prosecutor shall be responsible for the retention, storage and security of information and physical evidence obtained in the course of the investigations by his or her Office.

B4. The Office of the Registrar

1. Functions of the Registrar[12] [13]

1. Without prejudice to the authority of the Office of the Prosecutor under the Statute to receive, obtain and provide information and to establish channels of communication for this purpose, the Registrar shall serve as the Court's channel of communication.

2. The Registrar shall also be responsible for the internal security of the Court in consultation with the Presidency and the Prosecutor, as well as the host State.

2. Operation of the Registry

1. In discharging his or her responsibility for the organization and the management of the Registry, the Registrar shall put in place regulations to govern the operation of the Registry. In preparing or amending these regulations, the Registrar shall consult with the Prosecutor on any matters which may affect the operation of the Office of the Prosecutor.

2. Such regulations shall be approved by the Presidency.

3. The regulations shall provide for defence counsel to have access to the appropriate and reasonable administrative assistance of the Registry.

3. Records

1. The Registrar shall keep a database containing all the particulars of each case brought before the Court, subject to any order of a judge or Chamber providing for the non-disclosure of any document or information, and to the protection of sensitive personal data. Information on the database shall be available to the public in the working languages of the Court.

2. The Registrar shall also maintain the other records of the Court.

4. Rules relating to the Victims and Witnesses Unit

4.1 Functions of the Unit

1. The Victims and Witnesses Unit shall exercise its functions in accordance with article 43, paragraph 6.

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[12] Some delegations were of the view that rules under Part 4 relating to information and assistance to be provided to victims in order to ensure their participation at all stages of the proceedings should be placed in this rule. This would apply in particular to rules 4.1 (2) (a) (i) and 4.1 (2) (c) (i) and (ii). Those functions apply to all victims and not only to those referred to in article 43, paragraph 6. Moreover, the rule under 4.1 (2) (c) should be supplemented with the idea that the Registrar shall assist victims in organizing their legal representation and provide legal representatives of the victims with adequate support, including such facilities as may be necessary.

[13] It may be necessary to take into consideration discussions under Part 2 regarding victims who intend to participate in specific investigations.

2. The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and these Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate:

(a) With respect to all witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

(i) To inform them of their rights under the Statute and these Rules, and of the existence, functions and availability of the Unit;

(ii) To provide them with adequate protective and security measures and to formulate long- and short-term plans for their protection;

(iii) To recommend to the organs of the Court of the adoption of protection measures and also advise relevant States of such measures;

(iv) To ensure that they are aware, in a timely manner, of the relevant decisions of the Court that may have an impact on their interests, subject to provisions on confidentiality;

(v) To assist them in obtaining medical, psychological and other appropriate assistance;

(vi) To make available to the Court and the parties training in issues of trauma, sexual violence, security and confidentiality;

(vii) To recommend, in consultation with the Office of the Prosecutor, the elaboration of a code of conduct, emphasizing the vital nature of security and confidentiality for investigators of the Court and of the defence and all intergovernmental or non-governmental organizations acting at the request of the Court, as appropriate;

(viii) To cooperate with States, where necessary, in providing any of the measures stipulated in this Rule;

(b) With respect to witnesses:

(i) To advise them where to obtain legal advice for the purpose of protecting their rights, in particular in relation to their testimony;

(ii) To assist them when they are called to testify before the Court;

(iii) To take gender-sensitive measures to facilitate the testimony at all stages of the Court proceedings of victims of sexual violence;

(c) With respect to victims:

(i) To assist them in participating in the different phases of the proceedings, in accordance with rule 6.30;

(ii) To assist them in obtaining legal advice and assistance for the purpose of protecting their rights during all stages of the proceedings, in accordance with rule 6.30;

(iii) To take gender-sensitive measures to facilitate the participation at all stages of the Court proceedings of victims of sexual violence.

3. In performing its functions, the Unit shall give due regard to the particular needs of children, elderly persons and persons with disabilities. In order to facilitate the participation and protection of children as witnesses, the Unit may assign, as appropriate, and with the agreement of the parents or of the legal guardian, a child-support person to assist a child through all stages of the proceedings.

4.2 Responsibilities of the Unit in the performance of its functions

For the efficient and effective performance of its work, the Unit shall:

(a) Ensure that the staff in the Victims and Witnesses Unit maintain confidentiality at all times;

(b) Recognizing the specific interests of the Office of the Prosecutor, the defence and the witnesses, respect the interests of the witness, including, where necessary, by maintaining an appropriate separation of the services between the Prosecution and defence witnesses, and act impartially when cooperating with all parties and in accordance with the rulings and decisions of the Chambers;

(c) Have administrative and technical assistance available for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, during all stages of the proceedings and thereafter, as is reasonably appropriate;

(d) Ensure training of its staff with respect to victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity;

(e) Where appropriate, cooperate with intergovernmental and non-governmental organizations.

4.3 Expertise in the Unit

In addition to the staff mentioned in article 43, paragraph 6, and subject to article 44, the Victims and Witnesses Unit may include, as appropriate, persons with expertise, *inter alia*, in the following areas:

(1) Witness protection and security;

(2) Legal and administrative matters, including areas of humanitarian and criminal law;

(3) Logistics administration;

(4) Psychological expertise in criminal proceedings;

(5) Gender and cultural diversity;

(6) Children, in particular traumatized children;

(7) Elderly persons, in particular in connection with war and exile trauma;

(8) Persons with disabilities;

(9) Social work and counselling;

(10) Health care;

(11) Interpretation and translation.

5. Rules relating to counsel of the defence

5.1 Responsibilities of the Registrar related to the rights of the defence

1. In accordance with article 43, paragraph 1, the Registrar shall organize the staff of the Registry in a manner that promotes the rights of the defence, consistent with the principle of fair trial as defined in the Statute. For that purpose, the Registrar shall, *inter alia*:

(a) Facilitate the protection of confidentiality, as defined in article 67 (1) (b) of the Statute;

(b) Provide support, assistance, and information to all defence counsel appearing before the Court and, as appropriate, support for professional investigators necessary for the efficient and effective conduct of the defence;

(c) Assist arrested persons, persons to whom article 55 (2) of the statute applies and the accused in obtaining legal advice and the assistance of legal counsel;

(d) Advise the Prosecutor and the Chambers of the Court, as needed, on relevant defence-related issues;

(e) Provide the defence with such facilities as may be necessary for the direct performance of the duty of the defence;

(f) Facilitate the dissemination of information and case law of the Court to defence counsel and, as appropriate, cooperate with national defence and bar associations or any independent representative body of counsel and legal associations referred to in paragraph 3 to promote the specialization and training of lawyers in the law of the Statute and the Rules.

2. The Registrar shall carry out the functions stipulated in paragraph 1, including the financial administration of the registry, in such a manner as to ensure the professional independence of defence counsel.

3. For such purposes as the management of legal assistance in accordance with rule 5.2 and the development of a code of professional conduct in accordance with rule YY, the Registrar shall consult, as appropriate, with any independent representative body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties.

5.2 Assignment of legal assistance

1. Subject to article 55, paragraph 2 (c) and article 67, paragraph 1 (d), criteria and procedures for assignment of legal assistance shall be established in Regulations of the Court, based on a proposal by the Registrar following consultations with any independent representative body of counsel or legal associations, as referred to in rule 5.1, paragraph 3.

2. The Registrar shall create and maintain a list of counsel who meet the criteria set forth in rule 5.3 and the Regulations of the Court. The person shall freely choose his or her counsel from this list or other counsel who meets the required criteria and is willing to be included in the list.

3. A person may seek from the Presidency a review of a decision to refuse a request for assignment of counsel. The decision of the Presidency shall be final. If a

request is refused, a further request may be made by a person to the Registrar, upon showing a change in circumstances.

4. A person electing to represent himself or herself shall so notify the Registrar in writing at the first opportunity.

5. Where a person claims to have insufficient means to pay for legal assistance and this is subsequently found not to be so, the Chamber dealing with the case at that time may make an order of contribution to recover the cost of providing counsel.

5.3 Appointment and qualifications of counsel of the defence

1. A counsel shall have established competence in international or criminal law and procedure, as well as the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings. A counsel shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. A counsel can be assisted by other persons, including professors of law, with relevant expertise.

2. Counsel engaged by a person exercising his or her right under the Statute to retain legal counsel of his or her choosing shall file a power of attorney with the Registrar at the earliest opportunity.

3. In the performance of their duties, counsels shall be subject to the Statute, these rules, the Regulations of the Court, the code of professional conduct for counsel promulgated in accordance with rule YY and any other document adopted by the Court that may be relevant to the performance of their duties.

YY. Code of professional conduct

1. The Presidency, on the basis of a proposal made by the Registrar, shall draw up a draft code of professional conduct for counsel, after having consulted the Prosecutor. In the preparation of the proposal, the Registrar shall conduct the consultations in accordance with rule 5.1, paragraph 3.

2. The draft code of professional conduct for counsel shall then be transmitted to the Assembly of States Parties, for the purpose of adoption, according to article 112, paragraph 7, of the Statute.

3. The code shall contain procedures for its amendment.

B5. Rules relating to texts, amendments and solemn undertaking (replacements and alternate judge)

Authentic texts[14]

The rules have been adopted in the official languages of the Court established by article 50, paragraph 1. All texts are equally authentic.

[14] Further consideration shall be given to the placement of this rule. It may not entirely pertain to Part 4 of the Statute.

Amendments[15]

1. Amendments to the Rules that are proposed in accordance with article 51, paragraph 2, shall be forwarded to the President of the Bureau of the Assembly of States Parties.

2. The President of the Bureau of the Assembly of States Parties shall ensure that all proposed amendments are translated into the official languages of the Court and are transmitted to the States Parties.

3. The procedure described in paragraphs 1 and 2 of the present rule shall also apply to the provisional rules referred to in article 51, paragraph 3.

Solemn undertaking

1. As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made:

(a) In the case of a judge:

"I solemnly undertake that I will perform my duties and exercise my powers as judge of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions and the secrecy of deliberations.";

(b) In the case of the Prosecutor, a Deputy Prosecutor, the Registrar and the Deputy Registrar of the Court:

"I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions."

2. The undertaking, signed by the person making it and witnessed by the President or a Vice-President of the Bureau of the Assembly of States Parties, shall be filed with the Registry and kept in the records of the Court.[16]

Solemn undertaking by the staff of the Office of the Prosecutor, the office of the Registry, interpreters or translators

1. (a) Upon commencing employment, every staff member of the Office of the Prosecutor or of the registry shall make the following undertaking:

"I solemnly undertake that I will perform my duties and exercise my powers as (title) of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions.";

(b) The undertaking signed by the person making it and witnessed, as appropriate, by the Prosecutor, the Deputy Prosecutor, the Registrar or the Deputy Registrar shall be filed with the Registry and kept in the records of the Court.

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[15] Further consideration shall be given to the placement of this rule. It may not entirely pertain to Part 4 of the Statute.

[16] Some delegations were of the view that further consideration should be devoted to this rule at the next session, concerning a greater solemnity to be given to the undertaking.

2. (a) Before performing any duties, an interpreter or a translator shall make the following undertaking:

"I solemnly declare that I will perform my duties faithfully, impartially and with full respect for the duty of confidentiality.";

(b) The undertaking, signed by the person making it and witnessed by the President of the Court or his or her representative, shall be filed with the Registry and kept in the records of the Court.

Replacements

1. A judge may be replaced for objective and justified reasons, *inter alia*:

(a) Resignation;

(b) Accepted excuse;

(c) Disqualification;

(d) Removal from office;

(e) Death.

2. Replacement shall take place in accordance with the pre-established procedure provided in the Statute, these rules and the Regulations of the Court.

Alternate judge[17]

Where an alternate judge has been assigned by the Presidency to a Trial Chamber pursuant to article 74.1 of the Statute, he or she shall sit through all proceedings and deliberations of the case, but may not take any part therein and shall not exercise any of the functions of the members of the Trial Chamber hearing the case, unless and until he or she is required to replace a member of the Trial Chamber if that member is unable to continue attending.

Rules relating to a single judge, publication of decisions of the Court, working languages of the Court, translation and interpretation services and procedure applicable to the publication of documents of the Court

Rule relating to article 39 (Chambers)

Single judge

1. Whenever the Pre-Trial Chamber decides to designate a single judge in accordance with article 39, paragraph 2 (b) (iii), it shall do so on the basis of objective pre-established criteria. The designated judge shall adopt the appropriate decisions on those questions on which decision by the full Chamber is not expressly provided for in the Statute or these Rules.

[17] A procedure for the designation of an alternate judge should be considered in the framework of Part 6 of the Statute.

2. The Pre-Trial Chamber, on its own motion or, if appropriate, at the request of a party, may decide that the functions of the single judge be deferred to the full Chamber.

Rules relating to article 50 (Official and working languages)

Publication of decisions of the Court

1. For the purposes of article 50, paragraph 1, the following decisions shall be considered as resolving fundamental issues:

(a) All decisions of the Appeals Division;

(b) All decisions of the Court on its jurisdiction or on the admissibility of a case pursuant to articles 17, 18, 19 and 20;

(c) All decisions of a Trial Chamber on guilt or innocence, sentencing and reparations to victims pursuant to articles 74, 75 and 76;

(d) All decisions of a Pre-Trial Chamber pursuant to article 57, paragraph 3 (d).

2. Decisions of the Court on confirmation of charges under article 61, paragraph 7, and on offences against the administration of justice under article 70, paragraph 3, shall be published in all the official languages of the Court when the Presidency determines that they resolve fundamental issues.

3. The Presidency may decide to publish other decisions in all the official languages of the Court when such decisions concern major issues relating to the interpretation or the implementation of the Statute or concern a major issue of general interest.

Working languages of the Court[18]

1. For the purposes of article 50, paragraph 2, the Presidency shall authorize that an official language of the Court be used as a working language when:

(a) That language is understood and spoken by the majority of those involved in a case before the Court and any of the participants in the proceedings so requests; or

(b) The Prosecutor and the Defence so request.

2. The Presidency may authorize that an official language of the Court be used as a working language if it considers that it would facilitate the efficiency of the proceedings.

[18] In order to facilitate the application of this rule, it may be necessary to include a rule in the Regulations of the Court stating that the Court should make all possible efforts to ensure that at least one of the judges of the Chambers in which the case is heard knows the official language used as a working language in a given case.

Translation and interpretation services

The Court shall arrange for the translation and interpretation services necessary to ensure the implementation of its obligations under the Statute and these Rules.

Procedure applicable to the publication of documents of the Court

The Court shall ensure that all documents subject to publication in accordance with the Statute and these Rules respect the duty to protect the confidentiality of the proceedings and the security of victims and witnesses.

Part 5*
Investigation and prosecution

Decision of the Prosecutor on the initiation of an investigation (rules 5.1 to 5.4)

Rule 5.1
Determination of reasonable basis to proceed with an investigation under article 15

In determining whether there is a reasonable basis to proceed with an investigation under article 15, paragraph 3, the Prosecutor shall consider the factors set out in article 53, paragraph 1 (a) to (c).

Rule 5.2
Evaluation by the Prosecutor of information provided

In acting pursuant to article 53, paragraph 1, the Prosecutor shall, in evaluating the information made available to him or her, analyse the seriousness of the information received.

For this purpose, the Prosecutor may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court.

Rule 5.3
Notification of a decision by the Prosecutor not to initiate an investigation

(a) When the Prosecutor decides not to initiate an investigation under article 53, paragraph 1, he or she shall promptly inform in writing the State or States that referred a situation under article 14, or the Security Council in respect of a situation covered by article 13, paragraph (b).

When the Prosecutor decides not to submit to the Pre-Trial Chamber a request for authorization of an investigation under article 15, he or she shall promptly inform in writing those who provided him or her with information in accordance with that article.

(b) The notifications referred to in paragraph (a) shall contain the Prosecutor's conclusion, the reasons for the conclusion, as well as a full explanation of those reasons.

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* The Preparatory Commission at its fourth session considered only the footnotes to rules relating to Part 5.

(c) In any case when the Prosecutor decides not to proceed with an investigation solely on the basis of article 53, paragraph 1 (c), he or she shall inform the Pre-Trial Chamber in writing promptly after making that decision.

The notification shall contain the Prosecutor's conclusion, the reasons for the conclusion, as well as a full explanation of those reasons.

(d)[19] The victims or their legal representatives shall be informed under the terms set forth in rules X to XX.

Rule 5.4
Notification of a decision by the Prosecutor not to prosecute

(a) When the Prosecutor decides that there is not a sufficient basis for prosecution under article 53, paragraph 2, he or she shall promptly inform the Pre-Trial Chamber in writing, together with the State or States that referred a situation under article 14, or the Security Council in respect of a situation covered by article 13, paragraph (b).

(b) The notifications referred to in paragraph (a) shall contain the Prosecutor's conclusion, the reasons for the conclusion, as well as the full explanation of those reasons.

(c)[20] The victims or their legal representative shall be informed under the terms set forth in rules X to XX.

Procedure to be followed in the event of an application for review of the decision by the Prosecutor not to proceed with an investigation or not to prosecute (rules 5.5 to 5.8)

Rule 5.5
Request for review

(a) A request under article 53, paragraph 3, for a review of a decision by the Prosecutor not to initiate an investigation or not to prosecute, shall be made in writing, and be supported with reasons, within 90 days following the notification given under rules 5.3 or 5.4.

(b) The Pre-Trial Chamber may request the Prosecutor to transmit the information or documents in his or her possession, or summaries thereof, that the Chamber considers necessary for the conduct of the review.

The Pre-Trial Chamber shall take such measures as are necessary to protect this information under articles 54, 72 and 93, and to protect the safety of witnesses and victims and members of their families under article 68, paragraph 5.

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[19] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[20] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

(c) When a State or the Security Council makes a request referred to in paragraph (a), the Pre-Trial Chamber may seek further observations from them.

(d) The victims or their legal representatives shall also be informed of this review and may take part in it subject to the conditions laid down in rules X to XX.[21]

They may, in accordance with article 19, paragraph 3, submit any observations on the jurisdiction of the Court or the admissibility of the case, if the request to the Pre-Trial Chamber concerns these issues.[22]

Rule 5.6
Decision of the Pre-Trial Chamber based on article 53, paragraph 3 (a)[23]

(a) A decision of the Pre-Trial Chamber, concurred in by a majority of the judges comprising the Chamber, shall contain reasons, as well as a full explanation of those reasons. It shall be communicated to all those who were involved in the review.

Where the Pre-Trial Chamber requests the Prosecutor to review, in whole or in part, his or her decision not to initiate an investigation or not to prosecute, the Prosecutor shall reconsider that decision as soon as possible.

(b) Once the Prosecutor has taken a final decision, he or she shall notify the Pre-Trial Chamber in writing. This notification shall contain the Prosecutor's conclusion, the reasons for the conclusion, as well as a full explanation of those reasons. It shall be communicated to all those who were involved in the review.

Rule 5.7
Review by the Pre-Trial Chamber pursuant to article 53, paragraph 3 (b)

(a) The Pre-Trial Chamber may on its own initiative review a decision of the Prosecutor taken solely under article 53, paragraph 1 (c) or 2 (c), following the notification given under rule 5.3 or 5.4.

The Pre-Trial Chamber shall inform the Prosecutor of its intention to review his or her decision and shall establish a time-frame during which the Prosecutor may submit observations and other material.

In cases where a request has been submitted to the Pre-Trial Chamber by a State or by the Security Council, the submitter shall also be informed and may submit observations in accordance with rule 5.5.

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[21] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[22] This provision will need to be considered as part of a general discussion of the rules which may be required to underpin article 19.

[23] While undertaking a review under article 53, the Pre-Trial Chamber may have to address issues relating to article 19. In turn, this may raise issues about the right to appeal a decision under article 19.

(b)[24] The victims or their legal representatives shall also be informed of this review and may take part in it subject to the conditions laid down in rules X to XX.

Rule 5.8
Decision by the Pre-Trial Chamber based on article 53, paragraph 3 (b)

The decision by the Pre-Trial Chamber to review a decision taken by the Prosecutor solely under article 53, paragraph 1 (c) or 2 (c), concurred in by a majority of the judges comprising the Chamber, shall contain reasons, as well as a full explanation of those reasons. It shall be communicated to all those who were involved in the review.

When the Pre-Trial Chamber does not confirm the decision by the Prosecutor, he or she shall proceed with the investigation or prosecution.

Collection of evidence (rules 5.9 to 5.14)

Rule 5.9
Record of questioning in every case

(a) A record shall be made of statements made by any person who is questioned in connection with an investigation or with proceedings. The record shall be signed by the person who records and conducts the questioning and by the person who is questioned and his or her counsel, if present and, where applicable, the Prosecutor or the judge who is present. The record shall note the date, time and place of, and all persons present during the questioning. It shall also be noted when someone has not signed the record as well as the reasons therefor.

(b) When the Prosecutor or national authorities question a person, due regard shall be given to article 55. When a person is informed of his or her rights under article 55, paragraph 2, the fact that this information has been provided shall be noted in the record.[25]

Rule 5.10
Recording of questioning in certain cases

(a) Whenever the Prosecutor questions a person to whom article 55, paragraph 2, applies, or for whom a warrant of arrest or a summons to appear has been issued under article 58, paragraph 7, the questioning shall be audio-recorded or video-recorded, in accordance with the following procedure:

(i) The person questioned shall be informed in a language he or she fully understands and speaks that the questioning is to be recorded or filmed and that the person concerned may object if he or she so wishes. The fact that this

[24] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[25] This provision may spell out who should give the information. This question could also be addressed in a rule underpinning Part 9 of the Statute.

information has been provided and the response given by the person concerned shall be noted in the record. The person may, before replying, speak in private with his or her counsel, if present. If the person questioned refuses to be recorded, the procedure outlined in rule 5.9 shall be followed;

A waiver of the right to be questioned in the presence of counsel shall be documented in writing and, if possible, be audio-recorded or video-recorded;

(ii) In the event of an interruption in the course of questioning, the fact and the time of the interruption shall be recorded before the audio-recording or video-recording ends as well as the time of resumption of the questioning;

(iii) At the conclusion of the questioning, the person questioned shall be offered the opportunity to clarify anything he or she has said and to add anything he or she may wish. The time of conclusion of the questioning shall be noted;

(iv) The tape shall be transcribed as soon as practicable after the conclusion of the questioning and a copy of the transcript supplied to the person questioned together with a copy of the recorded tape or, if multiple recording apparatus was used, one of the original recorded tapes;

(v) The original tape or one of the original tapes shall be sealed in the presence of the person questioned and his or her counsel, if present, under the signature of the Prosecutor and the person questioned and the counsel, if present.

(b) The Prosecutor shall make every reasonable effort to record the questioning in accordance with paragraph (a). As an exception, a person may be questioned without the questioning being audio-recorded or video-recorded where the circumstances prevent such recording taking place. In this case, the reasons for not recording the questioning shall be stated in writing.

(c) When, pursuant to paragraph (a) (i) or (b) of the present rule, the questioning is not recorded, the person questioned shall be provided with a copy of his or her statement.

(d) The Prosecutor may choose to follow the procedure set forth in paragraphs (a), (b) and (c) of the present rule also when questioning other persons than those mentioned in paragraph (a) of the present rule.

The Pre-Trial Chamber may, in pursuance of article 56, paragraph 2, order that the procedure in paragraph (a) of the present rule be applied to the questioning of any person.

Rule 5.11
Collection of information regarding the state of health of the person concerned

(a) The Pre-Trial Chamber may, on its own initiative or at the request of the Prosecutor, the person concerned or his or her counsel, order that a person having the rights outlined in article 55, paragraph 2, be given a medical, psychological or psychiatric examination. In making its determination, the Pre-Trial Chamber shall

consider the nature and purpose of the examination and whether the person consents to the examination.

(b) The Pre-Trial Chamber shall appoint one or more experts from the list of experts approved by the Registrar, or an expert approved by the Pre-Trial Chamber at the request of a party.

Rule 5.12
Evidence that cannot be reproduced

(a) Upon being advised by the Prosecutor in accordance with article 56, paragraph 1 (a), the Pre-Trial Chamber shall designate one of its judges to decide if any necessary measures as referred to in article 56, paragraph 2, are called for in accordance with article 56, paragraph 1 (b).[26]

A judge so designated shall hold consultations without delay with the Prosecutor and, subject to the provisions of article 56, paragraph 1 (c), with the person who has been arrested or who has appeared before the Court pursuant to summons and his or her counsel, in order to determine the measures to be taken and the modalities of their implementation.

(b) A decision of the Pre-Trial Chamber to take measures pursuant to article 56, paragraph 3, shall be concurred in by a majority of its judges after consultations with the Prosecutor. As provided in article 56, paragraph 2 (e), a judge may be named to observe and make recommendations and orders with respect to such measures.

During the consultations, the Prosecutor may advise the Pre-Trial Chamber that intended measures could jeopardize the proper conduct of the investigation.

Rule 5.13
Collection of evidence in the territory of a State Party

(a) Where the Prosecutor considers that article 57, paragraph 3 (d), applies, the Prosecutor may submit a written request to the Pre-Trial Chamber for authorization to take certain measures in the territory of the State Party in question.

(b) In arriving at its determination as to whether the request is well founded, the Pre-Trial Chamber shall take into account any views expressed by the State Party concerned. The Pre-Trial Chamber may, on its own initiative or at the request of the Prosecutor or the State Party concerned, decide to hold a hearing.[27]

(c) The Pre-Trial Chamber shall issue its decision in an order and shall state the reasons, based on the criteria set forth in article 57, paragraph 3 (d). The order may specify procedures to be followed in carrying out such collection of evidence.

(d) The Pre-Trial Chamber may review the order on its own motion or at the request of the Prosecutor or of the State Party concerned.

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[26] The question was raised whether further provisions on the procedures for taking of evidence are needed or whether the provisions of article 56 are sufficient.

[27] The issue of notification may need to be discussed further.

Rule 5.14
Collection of evidence at the request of the defence

(a) The Pre-Trial Chamber shall issue an order under article 57, paragraph 3 (b), where it is satisfied:

(i) That such an order will facilitate the collection of evidence that is material to the proper determination of the issues being adjudicated, or otherwise necessary to the proper presentation of the person's defence; and

(ii) In case of cooperation, that sufficient information has been provided to meet the requirements for a request under Part 9.

(b) Before taking the decision, the Pre-Trial Chamber shall seek the views of the Prosecutor.

Procedures in respect of restriction and deprivation of liberty (rules 5.15 to 5.17)

Rule 5.15
Detention in the custodial State

(a) The Court shall ensure that it is informed of the arrest of a person in response to a request made by the Court under article 89 or 92. Once so informed, the Court shall ensure that the person receives a copy of the arrest warrant issued by the Pre-Trial Chamber under article 58 and any relevant provisions of the Statute. The documents shall be made available in a language that the person fully understands and speaks.

(b) At any time after arrest, the person sought may make a request to the Pre-Trial Chamber for the appointment of legal counsel to assist with proceedings before the Court and the Pre-Trial Chamber shall consider such a request.

(c) A challenge of the issue whether the warrant of arrest was properly issued in accordance with article 58, paragraph 1 (a) and (b), shall be made in writing to the Pre-Trial Chamber. The application shall set out the basis for the challenge. Upon receipt of the application, the Pre-Trial Chamber shall seek the views of the Prosecutor and thereafter decide on the application without delay.

(d) When the authority of the custodial State notifies the Pre-Trial Chamber that a request for release has been made by the person arrested, in accordance with article 59, paragraph 5, the Pre-Trial Chamber shall provide its recommendations within any time limit set by the custodial State.

When the Pre-Trial Chamber is informed that the person is granted interim release by the competent authority of the custodial State, the Pre-Trial Chamber shall inform the custodial State how and when it would like to receive periodic reports on the status of the interim release.

Rule 5.16
Pre-trial detention at the seat of the Court

(a) If the person surrendered to the Court makes an initial request for interim release pending trial, either upon first appearance in accordance with rule 5.18 or subsequently, the Pre-Trial Chamber shall decide upon the request without delay, after seeking the views of the Prosecutor.

(b) The Pre-Trial Chamber shall review its ruling on the release or detention of a person in accordance with article 60, paragraph 3, at least every 120 days and may do so at any time on the request of the person or the Prosecutor.

(c) After the first appearance, a request for interim release must be made in writing. The Prosecutor shall be given notice of such a request. The Pre-Trial Chamber shall decide after having received observations in writing of the Prosecutor and the detained person. The Pre-Trial Chamber may decide to hold a hearing, at the request of the Prosecutor, the detained person or on its own initiative. A hearing must be held at least once every year.

Rule 5.17
Conditional release

(a) The Pre-Trial Chamber may set one or more conditions restricting liberty, including the following:

(i) The person may not travel beyond territorial limits set by the Pre-Trial Chamber without the explicit agreement of the Chamber;

(ii) The person may not go to certain places or associate with certain persons as specified by the Pre-Trial Chamber;

(iii) The person may not contact directly or indirectly victims and witnesses;

(iv) The person may not engage in certain professional activities;

(v) The person must reside at a particular address as specified by the Pre-Trial Chamber;

(vi) The person must respond when summoned by an authority or qualified person designated by the Pre-Trial Chamber;

(vii) The person must post bond or provide real or personal security or surety, for which the amount and the schedule and mode of payment shall be determined by the Pre-Trial Chamber;

(viii) The person must supply the Registrar with all identity documents, particularly his or her passport.

(b) At the request of the person concerned or the Prosecutor or on its own initiative, the Pre-Trial Chamber may at any time decide to amend the conditions set pursuant to paragraph (a).

(c) Before imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of the Prosecutor, the person concerned, any

relevant State and, under the terms set forth in rules X to XX, the victims or their legal representatives.[28]

(d) If the Pre-Trial Chamber is convinced that the person concerned has failed to comply with one or more of the obligations imposed, it may, on such basis, at the request of the Prosecutor or on its own initiative, issue a warrant of arrest in respect of the person.

(e) When the Pre-Trial Chamber issues a summons to appear pursuant to article 58, paragraph 7, and intends to set conditions restricting liberty, it shall ascertain the relevant provisions of the national law of the State receiving the summons.

In a manner that is in keeping with the national law of the State receiving the summons, the Pre-Trial Chamber shall proceed in accordance with paragraphs (a), (b) and (c). If the Pre-Trial Chamber receives information that the person concerned has failed to comply with conditions imposed, it shall proceed in accordance with paragraph (d).

Proceedings with regard to the confirmation of charges (rules 5.18 to 5.23)

Rule 5.18
Proceedings before the confirmation hearing

(a) A person subject to a warrant of arrest or a summons to appear under article 58, shall appear before the Pre-Trial Chamber, in the presence of the Prosecutor, promptly upon arriving at the Court. Subject to the provisions of articles 60 and 61, the person shall enjoy the rights set forth in article 67.

At this first appearance, the Pre-Trial Chamber shall set the date on which it intends to hold a hearing to confirm the charges. It shall ensure that this date, and any postponements under paragraph (e) of this rule, are made public.

(b) In accordance with article 61, paragraph 3, the Pre-Trial Chamber shall take the necessary decisions regarding disclosure between the Prosecutor and the person in respect of whom a warrant of arrest or a summons to appear has been issued. During disclosure the person concerned may be assisted or represented by the counsel of his or her choice or by a counsel assigned to him or her.

For that purpose, the Pre-Trial Chamber shall hold status conferences to ensure that disclosure takes place under satisfactory conditions. For each case, a pre-trial judge shall be appointed to organize such status conferences, on his or her own motion, or at the request of the Prosecutor or the person concerned.

All evidence disclosed between the Prosecutor and the person concerned for the purposes of the confirmation hearing shall be communicated to the Pre-Trial Chamber.

[28] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

(c) The Prosecutor shall provide to the Pre-Trial Chamber and to the person no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing.

Where the Prosecutor intends to amend the charges pursuant to article 61, paragraph 4, he or she shall notify the Pre-Trial Chamber and the person no later than 15 days before the date of the hearing.

Where the Prosecutor intends to present new evidence at the hearing, he or she shall provide the Pre-Trial Chamber and the person with a list of that evidence.

(d) If the person intends to present evidence under article 61, paragraph 6, he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing. The Pre-Trial Chamber shall transmit the list to the Prosecutor without delay. The person shall provide a list of evidence that he or she intends to present in response to any amended charges or a new list of evidence provided by the Prosecutor.

(e) The Prosecutor or the person may ask the Pre-Trial Chamber to postpone the date of the confirmation hearing. The Pre-Trial Chamber may also, on its own motion, decide to postpone the hearing.[29]

The Pre-Trial Chamber shall not take into consideration charges and evidence presented after the time limit, or any extension thereof, has expired.

(f) The Prosecutor and the person may lodge written submissions with the Pre-Trial Chamber, on points of fact and on law, including grounds for excluding criminal responsibility set forth in article 31, paragraph 1, no later than three days before the date of the hearing. A copy of these submissions shall be transmitted immediately to the Prosecutor or the person, as the case may be.

(g) The Registry shall create and maintain a record of the proceedings before the Pre-Trial Chamber, including all documents transmitted to the Chamber pursuant to this rule. The record may be consulted by the Prosecutor and by the person.

(h)[30] Victims and their legal representatives, who have been given access to the proceedings by virtue of article 68 and in accordance with the conditions laid down in rules X to XX, shall be notified of the date of the confirmation hearing and of any postponement thereof.

They may consult the record of the proceedings put together in accordance with paragraph (g) of this rule. They may lodge written submissions with the Pre-Trial Chamber no later than 15 days before the date of the hearing.

They may also ask to intervene during the hearing, by addressing a request to that effect to the Pre-Trial Chamber no later than 15 days before the hearing. The Pre-Trial Chamber shall rule on the request after receiving the observations of the Prosecutor and the person.

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[29] The question whether and which time limits can be enlarged or reduced by the Court will also be addressed in the context of the proposal of general provisions about time limits.

[30] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

(i)[31] States wishing to challenge the jurisdiction of the Court or the admissibility of the case before the Pre-Trial Chamber at the time of the confirmation hearing shall make a request to that effect no later than 30 days before the date of the hearing.

States may request the Pre-Trial Chamber to postpone the date of the hearing.

They shall lodge their written submissions with the Registry no later than 15 days before the date of the hearing. Such submissions shall be joined to the record of the proceedings and be transmitted to the Prosecutor, the person and the victims or their legal representatives, in accordance with rules X to XX.

Rule 5.19
Proceedings at the confirmation hearing in the presence of the person charged

(a) The President of the Pre-Trial Chamber shall ask the officer of the Registry assisting the Chamber to read out the charges as presented by the Prosecutor. The President shall determine how the hearing is to be conducted and, in particular, may establish the order and the conditions in which he or she intends the parties to explain the evidence contained in the record of the proceedings.

(b) Before hearing the matter on the merits, the President of the Pre-Trial Chamber shall ask:

(i) The Prosecutor and the person, and any representatives of States present, whether they intend to raise objections or make observations concerning the jurisdiction of the Court or the admissibility of the case;

(ii) The Prosecutor and the person whether they intend to raise objections or make observations concerning an issue related to the proper conduct of the proceedings prior to the confirmation hearing; and

(iii)[32] The victims or their legal representatives whether they have any observations to make.

At no subsequent point may the objections and observations made under (ii) above be raised or made again.

(c) If the objections or observations referred to in paragraph (b) of this rule are presented, the President of the Pre-Trial Chamber shall invite those referred to in paragraph (b) of this rule to present their arguments, in the order which he or she shall establish. The person shall have the right to reply.

If the objections raised or observations made are those referred to in paragraph (b) (i) above, the Pre-Trial Chamber shall separate these issues, adjourn the confirmation hearing and render a decision on the issues raised.

If the objections raised or observations made are those referred to in paragraph (b) (ii) above, the Pre-Trial Chamber shall decide whether to join the issue raised to

[31] These provisions will need to be considered as part of a general discussion of the rules which may be required to underpin article 19.

[32] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

the examination of the charges and the evidence, or to separate them, in which case it shall adjourn the confirmation hearing and render a decision on the issues raised.

(d)[33] During the hearing on the merits, the Prosecutor and the person shall present their arguments in accordance with article 61, paragraphs 5 and 6.

The President of the Pre-Trial Chamber may also invite victims and their legal representatives to speak, if they have been allowed to participate in the hearing. In this case, the person and the Prosecutor shall always have the right to reply after the victims or their legal representative.

Subject to the provisions of article 61, article 69 shall apply *mutatis mutandis* at the confirmation hearing. The Pre-Trial Chamber shall permit the victims participating in the hearing, the Prosecutor and the person, in that order, to make final observations. The President of the Pre-Trial Chamber may, in exceptional cases, authorize anyone participating in the proceedings to speak again, in which case the person shall have the right to reply.

Rule 5.20
Measures to ensure the presence of the person concerned at the confirmation hearing

(a) When a warrant of arrest or summons to appear in accordance with article 59, paragraph 7, has been issued for a person by the Pre-Trial Chamber and the person is arrested or served with the summons, the Pre-Trial Chamber shall ensure that the person is notified of the provisions of article 61, paragraph 2.

(b) The Pre-Trial Chamber may hold consultations with the Prosecutor, at the request of the latter or on its own initiative, in order to determine whether there is cause to hold a hearing on confirmation of charges under the conditions set forth in article 61, paragraph 2 (b). When the person concerned has a counsel known to the Court, the consultations shall be held in the presence of the counsel unless the Pre-Trial Chamber decides otherwise.

(c) The Pre-Trial Chamber shall ensure that a warrant of arrest for the person concerned has been issued and, if the warrant of arrest has not been executed within a reasonable period of time after the issuance of the warrant, that all reasonable measures have been taken to locate and arrest the person.

Rule 5.21
Waiver by the person concerned of the right to be present at the confirmation hearing

(a) If the person concerned is available to the Court but wishes to waive the right to be present at the hearing on confirmation of charges, he or she shall submit a written request to the Pre-Trial Chamber, which may then hold consultations with the Prosecutor and the person concerned, assisted or represented by his or her counsel.

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[33] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

(b) A confirmation hearing pursuant to article 61, paragraph 2 (a), shall only be held when the Pre-Trial Chamber is satisfied that the person concerned understands the right to be present at the hearing and the consequences of waiving this right.

(c) The Pre-Trial Chamber may authorize the person concerned to observe the hearing from outside the courtroom.

(d) The waiving of the right of the person concerned to be present at the hearing does not prevent the Pre-Trial Chamber from receiving written observations on issues before the Chamber.

Rule 5.22
Decision to hold the confirmation hearing in the absence of the person concerned

(a) After holding consultations under rules 5.20 and 5.21, the Pre-Trial Chamber shall decide whether there is cause to hold a hearing on confirmation of charges in the absence of the person concerned, and in that case, whether the person may be represented by counsel. The Pre-Trial Chamber shall, when appropriate, set a date for the hearing and make the date public.

The Pre-Trial Chamber may, before taking the decision, invite observations from the victims or their legal representatives, in accordance with rules X to XX.[34]

The decision of the Pre-Trial Chamber shall be notified to the Prosecutor and, if possible, to the person concerned or his or her counsel, and to the victims or their legal representatives, if they have been allowed to participate in the proceedings pursuant to rules X to XX.[35]

(b) If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is not available to the Court, the confirmation of charges may not take place until the person is available to the Court. The Pre-Trial Chamber may review its decision at any time, at the request of the Prosecutor or on its own initiative.

If the Pre-Trial Chamber decides not to hold a hearing on confirmation of charges in the absence of the person concerned, and the person is available to the Court, it shall order the person to appear.

Rule 5.23
Confirmation hearing in the absence of the person concerned

(a) The provisions of rules 5.18 and 5.19 apply *mutatis mutandis* to the preparation for and holding of a hearing on confirmation of charges in the absence of the person concerned.

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[34] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[35] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

If the Pre-Trial Chamber has determined that the person concerned shall be represented by counsel, the counsel shall have the opportunity to exercise the rights recognized to the person concerned.

(b) When the person who has fled is subsequently arrested and the Court has confirmed the charges upon which the Prosecutor intends to pursue the trial, the person charged shall be committed to the Trial Chamber established under article 69, paragraph 11. The person charged may request in writing that the Trial Chamber refer issues to the Pre-Trial Chamber that are necessary for the Chamber's effective and fair functioning in accordance with article 64, paragraph 4.

Closure of the pre-trial phase (rules 5.24 to 5.27)

Rule 5.24
Procedure in the event of different decisions on multiple charges

If the Pre-Trial Chamber is ready to confirm some of the charges but adjourns the hearing on other charges under article 61, paragraph 7 (c), it may decide that the committal of the person concerned to the Trial Chamber on the charges that it is ready to confirm shall be deferred pending the continuation of the hearing.

The Pre-Trial Chamber may then establish a time-frame during which the Prosecutor may proceed in accordance with article 61, paragraph 7 (c) (i) or (ii).

Rule 5.25
Amendment of the charges

(a) If the Prosecutor seeks to amend charges already confirmed before the trial has begun, in accordance with article 61, paragraphs 9 and 11, the Prosecutor shall make a written request to the Pre-Trial Chamber and shall so notify the accused and the victims or their legal representative, if they have been allowed to participate in the proceedings under rules X to XX.[36]

(b) Before deciding whether to authorize the amendment, the Pre-Trial Chamber may request the accused and the Prosecutor to submit written observations on certain issues of fact or law. The victims and their legal representatives may also submit observations in accordance with rules X to XX, if they have been allowed to participate in the proceedings.[37]

(c) If the Pre-Trial Chamber determines that the amendments proposed by the Prosecutor constitute additional or more serious charges, it shall proceed, as appropriate, in accordance with rules 5.18 and 5.19 or rules 5.20 to 5.23.

[36] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[37] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

Rule 5.26
Notification of the decision on the confirmation of charges

The decision of the Pre-Trial Chamber on the confirmation of charges and the committal of the accused to the Trial Chamber shall be notified, if possible, to the person concerned and his or her counsel and, if applicable, to the victims or their legal representatives.[38]

Such a decision and the record of the proceedings of the Pre-Trial Chamber shall be transmitted to the Presidency.

Rule 5.27
Constitution of the Trial Chamber

When the Presidency constitutes and refers the case to the Trial Chamber, the Presidency shall transmit the decision of the Pre-Trial Chamber and the record of the proceedings to the Trial Chamber. The Presidency may also refer the case to a previously constituted Trial Chamber.

Disclosure (rules 5.28 to 5.34)

N.B. The rules below are given numbers referring to Part 5 of the Statute. Since the provisions on disclosure are primarily of a general nature, they may better be placed in a separate chapter of the Rules of Procedure and Evidence. This question will be addressed at a later stage when the general structure of the Rules of Procedure and Evidence is discussed.

Rule 5.28
Pre-trial disclosure relating to prosecution witnesses

(a) The Prosecutor shall provide the defence with the names of witnesses whom the Prosecutor intends to call to testify and copies of any prior statements made by those witnesses. This shall be done sufficiently in advance to enable the adequate preparation of the defence.[39]

(b) The Prosecutor shall subsequently advise the defence of the names of any additional prosecution witnesses and provide copies of their statements when the decision is made to call those witnesses.

(c) The statements of prosecution witnesses shall be made available in a language which the accused fully understands and speaks.

(d) This rule is subject to the protection and privacy of victims and witnesses and the protection of confidential information as provided for in the Statute and rule 5.32.

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[38] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

[39] This rule may need to be revised after the comprehensive discussion on victims, in particular on the issue of non-disclosure of the identity of witnesses.

Rule 5.29
Inspection of material in possession or control of the Prosecutor

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rule 5.32, permit the defence to inspect any books, documents, photographs and tangible objects in the Prosecutor's possession or control which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.[40]

Rule 5.30
Disclosure by the defence

(a) The defence shall notify the Prosecutor of its intent to:

(i) Plead the existence of an alibi; in which case the notification shall specify the place or places at which the accused claims to have been present at the time of the alleged crime and the names of witnesses and any other evidence upon which the accused intends to rely to establish the alibi; or

(ii) Raise a ground for excluding criminal responsibility provided for in article 31, paragraph 1; in which case the notification shall specify the names of witnesses and any other evidence upon which the accused intends to rely to establish the ground.

(b) With due regard to time limits set forth in other rules, notification under paragraph (a) of this rule shall be given sufficiently in advance to enable the Prosecutor to prepare adequately and to respond. The Chamber of the Court dealing with the matter may grant the Prosecutor an adjournment to address the issue raised by the defence.

(c) Failure of the defence to provide notice under this rule shall not limit its right to raise matters dealt with in paragraph (a) and to present evidence.

(d) This rule does not prevent a Chamber of the Court from ordering disclosure of any other evidence.

Rule 5.31
Procedures for raising a ground for excluding criminal responsibility under article 31, paragraph 3

(a) The defence shall give notice to both the Trial Chamber and the Prosecutor if it intends to raise a ground for excluding criminal responsibility under article 31, paragraph 3. This shall be done sufficiently in advance of the commencement of the trial to enable the Prosecutor to prepare adequately for trial.

[40] This rule relates only to the inspection of material held by the Prosecutor. The issue of whether the Prosecutor should have access to material held and disclosed to be introduced into evidence by the defence also needs consideration.

(b) Following notice given under paragraph (a) of this rule, the Trial Chamber shall hear both parties before deciding whether the defence can plead the ground for excluding criminal responsibility.

(c) If the defence is permitted to plead the ground, the Trial Chamber may grant the Prosecutor an adjournment to address the ground raised by the defence.

Rule 5.32
Restriction on disclosure[41]

(a) Reports, memoranda or other internal documents prepared by a party, its assistants or representatives in connection with the investigation or preparation of the case are not subject to disclosure.

(b) Where material or information is in the possession or control of the Prosecutor which must be disclosed in accordance with the Statute, but disclosure may prejudice further or ongoing investigations, the Prosecutor may apply to the Chamber of the Court dealing with the matter for a ruling as to whether the material or information must be disclosed to the defence. The matter shall be heard on an *ex parte* basis by the Chamber. However, the Prosecutor may not introduce such material or information into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

(c) Where material or information is in the possession or control of the Prosecutor which is withheld under article 68, paragraph 5, such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the accused.

(d) Where material or information is in the possession or control of the defence which is subject to disclosure, it may be withheld in circumstances which would allow the Prosecutor to rely on article 68, paragraph 5, and a summary thereof submitted instead. Such material and information may not be subsequently introduced into evidence during the confirmation hearing or the trial without adequate prior disclosure to the Prosecutor.

(e) Where steps have been taken to ensure the confidentiality of information, in accordance with articles 54, 57, 64, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, such information shall not be disclosed, except in accordance with those articles.

(f) Where material or information is in the possession or control of the Prosecutor which is protected under article 54, paragraph 3 (e), the Prosecutor may not subsequently introduce such material or information into evidence without the prior consent of the provider of the material or information and adequate prior disclosure to the accused.

(g) If the Prosecutor introduces material or information protected under article 54, paragraph 3 (e), into evidence, the Chamber of the Court dealing with the matter may not order the production of additional evidence received from the

[41] As a matter of drafting, this rule could be separated into rules dealing with: (1) restriction of disclosure, (2) disclosure of previously held material and (3) material and information protected under article 54, paragraph 3 (e).

provider of the initial material or information, nor may that Chamber for the purpose of obtaining such additional evidence itself summon the provider or a representative of the provider as a witness or order their attendance.

(h) If the Prosecutor calls a witness to introduce in evidence any material or information which has been protected under article 54, paragraph 3 (e), the Chamber of the Court dealing with the matter may not compel that witness to answer any question relating to the material or information or its origin, if the witness declines to answer on grounds of confidentiality.

(i) The right of the accused to challenge evidence which has been protected under article 54, paragraph 3 (e), shall remain unaffected subject only to the limitations contained in paragraphs (g) and (h) of the present rule.

(j) The Chamber of the Court dealing with the matter may order an application by the defence that, in the interest of justice, material or information in the possession of the accused which has been provided to the accused under the same conditions as set forth in article 54, paragraph 3 (e), and is to be introduced into evidence shall be subject *mutatis mutandis* to paragraphs (f), (g) and (h) of the present rule.

(k) The Chamber of the Court dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, particularly by authorizing the non-disclosure of their identity.[42]

Rule 5.33
Ruling on exculpatory evidence

The Prosecutor may request as soon as practicable a hearing on an *ex parte* basis before the Chamber of the Court dealing with the matter for the purpose of obtaining a ruling under article 67, paragraph 2.[43]

Rule 5.34
Continuing requirements to disclose

If either party intends to present additional evidence or material, whether previously or newly discovered, which should have been disclosed earlier pursuant to the Statute or the Rules of Procedure and Evidence, that party shall promptly notify the other party, and the Chamber of the Court dealing with the matter, of the existence of the additional evidence or material.

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[42] This rule may need to be revised after the comprehensive discussion on victims, in particular on the issue of non-disclosure of the identity of witnesses.

[43] Consideration should be given to setting forth procedures which protect the accused's rights to disclosure of exculpatory evidence without compromising the existing obligations as to confidentiality, and the safety of persons and the investigation (see rule 5.32). Furthermore, consideration should be given to whether provisions on consequences of the failure to disclose exculpatory evidence are needed.

Part 6*
The Trial

I. Evidence (rules 6.1 to 6.9)

Rule 6.1
General provisions

(a) In making any direction under rules 6.1 to 6.31 a Chamber of the Court shall take into account the needs of all victims, in particular of children, elderly persons and persons with disabilities.[44]

(b) A Chamber of the Court shall have the authority, in accordance with the discretion described in article 64, paragraph 9, to assess freely all evidence submitted in order to determine its relevance or admissibility in accordance with article 69.

(c) A Chamber of the Court shall rule on an application of a party or on its own motion, made under article 64, subparagraph 9 (a), concerning admissibility when it is based on the grounds set out in article 69, paragraph 7.

(d) Without prejudice to article 66, paragraph 3, a Chamber of the Court shall not impose a legal requirement that corroboration is required in order to prove any crime within the jurisdiction of the Court, in particular crimes of sexual violence.

(e) The rules of evidence set forth in rules (x) to (xx), together with article 69 of the Statute, shall apply in proceedings before all Chambers of the Court.

(f) The Chambers of the Court shall not apply national laws governing evidence, other than in accordance with article 21.

(g) (i) In making any order setting time limits regarding the conduct of any proceedings, the Court shall have regard to the need to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defence and the victims;

(ii) Taking into account the rights of the accused in particular under article 67, paragraph (1) (c), participants to whom any order is directed shall endeavour to act as expeditiously as possible, within the time period ordered by the Court.[45]

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* The Preparatory Commission, at its fourth session, considered footnotes and some of the rules relating to Part 6. Those rules considered at the fourth session are so indicated in the relevant footnotes.

[44] Considered by the Preparatory Commission at its fourth session.

[45] Considered by the Preparatory Commission at its fourth session.

Rule 6.2
Procedure relating to the relevance or admissibility of evidence

(a) An issue relating to relevance or admissibility must be raised at the time when the evidence is submitted to a Chamber of the Court. Exceptionally, when those issues were not known at the time when the evidence was submitted, it may be raised immediately after the issue has become known. The Chamber may request that the issue be raised in writing. The written motion shall be communicated by the Court to all those who participate in the proceedings, unless otherwise decided by the Court.

(b) A Chamber shall give reasons, which shall be placed on the record, for any rulings it makes on evidentiary matters, unless the reasons are otherwise obvious within the context of the proceedings.

(c) Evidence ruled irrelevant or inadmissible shall not be considered by the Chamber.

Rule 6.3
Agreements as to evidence

The Prosecutor and the defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber of the Court may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims.

Rule 6.4
Privileged communications and information

(a) Without prejudice to paragraph 1 (b) of article 67, communications made in the context of the professional relationship between a person and his or her legal counsel shall be regarded as privileged, and consequently not subject to disclosure, unless:

(i) The person consents in writing to such disclosure; or

(ii) The person voluntarily disclosed the content of the communication to a third party, and that third party then gives evidence of that disclosure.

(b) Having regard to rule 6.1 (f), communications made in the context of a class of professional or other confidential relationships shall be regarded as privileged, and consequently not subject to disclosure, under the same terms as subparagraphs (i) and (ii) of paragraph (a), if a Chamber of the Court decides in respect of that class that:

(i) Communications occurring within that class of relationship are made in the course of a confidential relationship producing a reasonable expectation of privacy and non-disclosure;

(ii) Confidentiality is essential to the nature and type of relationship between the person and the confidant; and

(iii) Recognition of the privilege would further the objectives of the Statute and the Rules of Procedure and Evidence.

In making a decision, the Court shall give particular regard to recognizing as privileged those communications made in the context of the professional relationship between a person and his or her medical doctor, psychiatrist, psychologist or counsellor, in particular those related to or involving victims, or between a person and a member of a religious clergy; and in the latter case, the Court shall recognize as privileged those communications made in the context of a sacred confession where it is an integral part of the practice of that religion.

(c) The Court shall regard as privileged, and consequently not subject to disclosure, including by way of testimony of any present or past ICRC official or employee, any information, documents or other evidence which came into the possession of the International Committee of the Red Cross (ICRC) in the course, or as a consequence of, the performance by the ICRC of its functions under the Statutes of the International Red Cross and Red Crescent Movement, unless:

(i) After consultations undertaken pursuant to paragraph (e), the ICRC does not object in writing to such disclosure, or otherwise has waived this privilege; or

(ii) Such information, documents or other evidence is contained in public statements and documents of the ICRC.

(d) Nothing in paragraph (c) shall affect the admissibility of the same evidence obtained from a source other than the ICRC and its officials or employees when such evidence has also been acquired by this source independently of the ICRC and its officials or employees.

(e) If the Court determines that ICRC information, documents or other evidence are of great importance for a particular case, consultations shall be held between the Court and the ICRC in order to seek to resolve the matter by cooperative means, bearing in mind the circumstances of the case, the relevance of the evidence sought, whether the evidence could be obtained from a source other than the ICRC, the interests of justice and of victims, and the performance of the Court's and the ICRC's functions.

Rule 6.5[46]
Principles of evidence in cases of sexual violence

In cases of sexual violence, the Court shall be guided by and, where appropriate, apply the following principles:

(a) Consent cannot be inferred by reason of any words or conduct of a victim where force, threat of force, coercion or taking an advantage of a coercive environment undermined the victim's ability to give voluntary and genuine consent.

[46] Considered by the Preparatory Commission at its fourth session.

(b) Consent cannot be inferred by reason of any words or conduct of a victim where the victim is incapable of giving genuine consent.

(c) Consent cannot be inferred by reason of the silence of, or lack of resistance by, a victim to the alleged sexual violence.

(d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

Rule 6.5 *bis*[47]
Evidence of other sexual conduct

In the light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69, paragraph 4, a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness.

Rule 6.5 *ter*[48]
In camera procedure to consider relevance or admissibility of evidence

(a) Where there is an intention to introduce or elicit, including by means of the questioning of a victim or witness, evidence that the victim consented to an alleged crime of sexual violence, or evidence of the words, conduct, silence or lack of resistance of a victim or witness as referred to in paragraphs (a) through (d) of Rule 6.5, notification shall be provided to the Court which shall describe the substance of the evidence intended to be introduced or elicited and the relevance of the evidence to the issues in the case.

(b) In deciding whether the evidence referred to in paragraph (a) is relevant or admissible, a Chamber shall hear *in camera* the views of the Prosecutor, the defence, the victim or his or her legal representative or the witness, and shall take into account whether that evidence has a sufficient degree of probative value to an issue in the case and the prejudice that such evidence may cause, in accordance with article 69, paragraph 4. For this purpose, the Chamber shall have regard to article 21, paragraph 3, and articles 67 and 68, and shall be guided by the principles stated in Rule 6.5, especially with respect to the proposed questioning of a victim.

(c) Where the Chamber determines that the evidence referred to in paragraph (b) is admissible in the proceedings, the Chamber shall state on the record the specific purpose for which the evidence is admissible. In evaluating the evidence during the proceedings, the Chamber shall apply the principles stated in Rule 6.5.

Rule 6.6
Amicus curiae and other forms of submission

(a) At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State,

[47] This rule needs further discussion at the next session.
[48] Considered by the Preparatory Commission at its fourth session.

organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate.

(b) A brief submitted under paragraph (a) shall be filed with the Registrar, who shall provide copies to the Prosecutor, the defence and the victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx). The Chamber shall determine what time limits shall apply to the filing of such briefs.

(c) The Prosecutor, the defence and the victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx), shall have the opportunity to respond to these observations submitted to the Court under paragraph (a).

Rule 6.7
Solemn undertaking

(a) Except as described in paragraph (b), every witness shall, in accordance with article 69, paragraph 1, make the following solemn undertaking before testifying:

"I solemnly declare that I will speak the truth, the whole truth and nothing but the truth."

(b) A person under the age of 18 or a person whose judgement has been impaired and who, in the opinion of the Chamber of the Court, does not understand the nature of a solemn undertaking may be allowed to testify without this solemn undertaking if the Chamber considers that the person is able to describe matters of which he or she has knowledge and that the person understands the meaning of the duty to speak the truth.

(c) Before testifying, the witness shall be informed of the offence defined in article 70.1 (a).

Rule 6.8
Findings and evidence from other proceedings

(a) Without prejudice to the rights of an accused under article 67, a Chamber may, at the request of the Prosecutor, the defence or victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx), admit as evidence:

(i) With the consent of the defence, the specific factual findings of a Chamber from other proceedings;

(ii) Documentary or other physical evidence from other proceedings of a Chamber; where such evidence is relevant to matters at issue in the current proceedings, and all appeals, if any, in the other proceedings have been completed.

(b) The Chamber shall hear the participants to the proceedings prior to admitting any such evidence.

Rule 6.9[49] [50] [51]
Self-incrimination by a witness[52]

(a) A witness may object to making any statement that might tend to incriminate him or her. The Chamber may require[53] the witness to answer the question or questions, after assuring the witness that the evidence provided in response to the questions:

(i) Will be kept confidential and will not be disclosed to the public or any State; and

(ii) Will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71;

(iii) Unless a witness has been notified pursuant to Rule 9.14 the Chamber shall notify a witness of the provisions of this rule before his or her testimony.

(b) Before giving such an assurance, the Chamber shall seek the views of the Prosecutor, *ex parte*, to determine if the assurance should be given to this particular witness.

(c) In determining whether to require the witness to answer, the Chamber shall consider:

(i) The importance of the anticipated evidence;

(ii) Whether the witness would be providing unique evidence;

(iii) The nature of the possible incrimination, if known; and

(iv) The sufficiency of the protections for the witness, in the particular circumstances.

(d) If the Chamber determines it would not be appropriate to provide an assurance to this witness, it shall not require the witness to answer the question. If the Chamber determines not to require the witness to answer, it may still continue the questioning of the witness on other matters.

(e) In order to give effect to the assurance, the Chamber shall:

(i) Order that the evidence of the witness be given *in camera*;

(ii) Order that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanction under article 71;

(iii) Specifically advise the Prosecutor, the accused, the defence counsel and any Court staff present of the consequences of a breach of the order under subparagraph (ii);

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[49] This rule requires further discussion at the next session.

[50] One delegation expressed its doubts about the need for this rule.

[51] Considered by the Preparatory Commission at its fourth session.

[52] Consideration needs to be given to whether a separate rule is necessary concerning the incrimination of family members by spouses, children and parents.

[53] Some delegations are concerned about the use of the word "require". Other delegations are concerned that removal of the word "require" would make the rule ineffective.

(iv) Order the sealing of any record of the proceedings; and

(v) Use protective measures with respect to any decision of the Court to ensure that the identity of the witness and the content of the evidence given are not disclosed.

(f) Where the Prosecutor is aware that the testimony of any witness may raise issues with respect to self-incrimination, he or she shall request an *in camera* hearing and advise the Chamber of this, in advance of the testimony of the witness. The Chamber may impose the measures outlined in subparagraph (e) for all or a part of the testimony of that witness.

(g) The accused, defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in subparagraph (f).

(h) If an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice if he or she so request for the purpose of the application of this rule.

II. The trial (rules 6.10 to 6.25 and 6.26 to 6.X)

Rule 6.10
Status conferences

(a) Promptly after it is constituted, the Trial Chamber shall hold a status conference in order to set the date of the trial. The Trial Chamber, on its own motion, or at the request of the Prosecutor or the defence, may postpone the date of the trial. The Trial Chamber shall notify the trial date to all those who participated in the proceedings including, if applicable, the victims or the legal representatives of the victims.[54] It shall ensure that this date and any postponements are made public (see rule 5.18 (a)).

(b) In order to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber may confer with the parties by holding status conferences as necessary; and in doing so shall exercise the relevant powers of the Pre-Trial Chamber.

Rule 6.11
Motions challenging admissibility or jurisdiction

(a) Prior to the commencement of the trial, challenges to the jurisdiction of the Court or the admissibility of the case pursuant to article 19, paragraph 2, must be submitted in writing. The Trial Chamber shall transmit the motion to all those who participated in the proceedings including, if applicable, the victims or the legal representatives of victims. Participants may respond by written observations to the

[54] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

motion within a time period determined by the Trial Chamber.[55] The Trial Chamber may decide to hold a hearing before ruling on any such motions.

(b) Challenges to the jurisdiction of the Court or the admissibility of the case at the commencement of the trial, or subsequently with the leave of the Court, shall be dealt with by the Presiding Judge of the Trial Chamber in accordance with the procedure specified in rule 5.19.

Rule 6.12
Other motions

(a) Prior to the commencement of the trial, the Trial Chamber on its own motion, or at the request of the Prosecutor or the defence, may rule on any issue concerning the conduct of the proceedings. Any request from the Prosecutor or the defence shall be in writing and, unless the request is for an *ex parte* procedure, served on the other party. For all requests other than those submitted for an *ex parte* procedure, the other party shall have the opportunity to file a response.

(b) At the commencement of the trial, the Trial Chamber shall ask the Prosecutor and the defence whether they have any objections or observations concerning the conduct of the proceedings which have arisen since the confirmation hearings. Such objections or observations may not be raised or made again on a subsequent occasion, without leave of the Trial Chamber.

(c) After the commencement of the trial, the Trial Chamber on its own motion, or at the request of the Prosecutor or the defence, may rule on issues that arise during the course of the trial.

Rule 6.13
Medical examination of the accused

(a) The Trial Chamber may, for the purpose of discharging its obligations under article 64, paragraph 8 (a), or for any other reasons, or at the request of a party, order a medical, psychiatric or psychological examination of the accused, under the conditions set forth in rule 5.11.

(b) The Trial Chamber shall place its reasons for any such order on the record.

(c) The Trial Chamber shall appoint one or more experts from the list of experts approved by the Registrar, or an expert approved by the Trial Chamber at the request of a party.

(d) Where the Trial Chamber is satisfied that the accused is unfit to stand trial it shall order that the trial is adjourned. The Trial Chamber may, on its own motion or at the request of the Prosecution or the defence, review the case of the accused. In any event the case shall be reviewed every 120 days. If necessary the Trial Chamber may order further examinations of the accused. When the Trial

[55] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

Chamber is satisfied that the accused has become fit to stand trial it shall proceed in accordance with rule [6.10].

Rule 6.14
Instruments of restraint

Personal instruments of restraint shall not be used except as a precaution against escape, for the protection of the accused and others or for other security reasons, and shall be removed when the accused appears before a Chamber.

Rule 6.15
Joint and separate trials

(a) Persons accused jointly shall be tried together unless the Court, on its own motion or at the request of the Prosecutor or the defence, orders that separate trials are necessary, in order to avoid serious prejudice to the accused, to protect the interests of justice or because a person jointly accused has made an admission of guilt and has been convicted in accordance with article 65, paragraph 2.

(b) In joint trials, each accused shall be accorded the same rights as if such accused were being tried separately.

Rule 6.16
Record of the trial proceedings

(a) In accordance with article 64, paragraph 10, the Registrar shall cause to be made, and preserve, a full and accurate record of all proceedings, including transcripts, audio and video recordings and other means of capturing sound or image.

(b) A Trial Chamber may order the disclosure of all or part of the record of closed proceedings when the reasons for ordering its non-disclosure no longer exist.

(c) The Trial Chamber may authorize persons, other than the Registrar, to take photographs, video and audio recordings and other means of capturing the sound or image of the trial.

Rule 6.17
Custody of evidence

The Registrar shall retain and preserve, as necessary, all the evidence and other materials offered during the hearing, subject to any order that the Trial Chamber shall make.

Rule 6.18
Directions for the conduct of the proceedings and testimony

(a) If the Presiding Judge does not give directions under article 64, paragraph 2, the Prosecutor and the defence shall agree on the order and manner in which the evidence shall be submitted to the Trial Chamber. If no agreement can be reached, the Presiding Judge of the Trial Chamber shall issue directions.

(b) A party that submits evidence in accordance with article 64, paragraph 3, by way of a witness, has the right to question that witness. The Prosecution and the defence, and if applicable, the victims or their legal representative when they participate in the proceedings pursuant to rules [•] to [•], have the right to question that witness about relevant matters related to the witness's testimony and its reliability and with the permission of the Chamber on other relevant matters. At any time, the Trial Chamber has the right to question a witness. In all cases the defence shall have the right to be the last to examine a witness.

(c) Unless otherwise ordered by the Trial Chamber, a witness other than an expert, or an investigator if he or she has not yet testified, shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying. When a witness testifies after hearing the testimony of others, the Trial Chamber shall take notice of this fact.

Rule 6.19
Record of the proceedings

(a) The Registrar shall maintain the record of the proceedings transmitted by the Pre-Trial Chamber, pursuant to rule 5.18 (g).

(b) Subject to any restrictions concerning confidentiality and the protection of national security information, the record may be consulted by the Prosecutor, the defence, the representatives of States when they participate in the proceedings, and the victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx).[56]

Rule 6.20
Disclosure and additional evidence

In order to enable the parties to prepare for trial and to facilitate the fair and expeditious conduct of the proceedings, the Trial Chamber shall, in accordance with article 64, paragraphs 3 (c) and 6 (d), and article 67, paragraph (2), and subject to article 68, paragraph 5, make any necessary orders for the disclosure of documents or information not previously disclosed and for the production of additional evidence. To avoid delay and to ensure that the trial commences on the set date, any such orders shall include strict time limits which shall be kept under review by the Trial Chamber.

[56] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

Rule 6.21
Additional hearings on matters related to sentence or reparations

Pursuant to article 76, paragraphs 2 and 3, for the purpose of holding *a* further *hearing* on matters related to sentence and, if applicable, reparations, the Presiding Judge of the Trial Chamber shall set the date of the further hearing. This hearing can be postponed, in exceptional circumstances, by the Trial Chamber, on its own motion or at the request of the Prosecutor or the defence and, if applicable, at the request of the victims or their legal representatives when they participate in the proceedings pursuant to rules (x) to (xx).[57]

Rule 6.22
Closure of evidence and closing statements

(a) The Presiding Judge of the Trial Chamber shall declare when the submission of evidence is closed.

(b) The Presiding Judge of the Trial Chamber shall invite the Prosecutor, the defence and, if applicable, the legal representative of the victims to make their closing statements. The Presiding Judge may also invite such participants to make statements in reply to the other closing statements. The defence shall always have the opportunity to speak last.

Rule 6.23
Postponement of the deliberations

(a) After the closing statements, the Trial Chamber shall retire to deliberate, *in camera*. The Trial Chamber shall inform the Prosecutor, the defence and, if applicable, the legal representatives of the victims and the representatives of States which have participated in the proceedings of the date on which the Trial Chamber will pronounce its decision. [The pronouncement will not be later than [x] days after the Trial Chamber has retired to deliberate.]

(b) When there is more than one charge, the Trial Chamber shall decide separately on each charge. When there is more than one accused, the Trial Chamber shall decide separately on the charges against each accused.

Rule 6.24
Delivery of the decisions of the Trial Chamber

(a) Decisions of the Trial Chamber concerning admissibility of a case, the jurisdiction of the Court, criminal responsibility of the accused, or sentence and reparations shall be pronounced in public and, wherever possible, in the presence of the accused, the Prosecutor and, if applicable, in the presence of the legal representatives of the victims and the representatives of the States which have participated in the proceedings.

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[57] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

(b) Copies of all the above-mentioned decisions shall be provided as soon as possible:

(i) To the person, in a language he or she understands and speaks fully;

(ii) To the person's counsel, the Prosecutor and, if applicable, to the legal representatives of the victims and the representatives of the States which have participated[58] in the proceedings, in the working languages of the Court.

Rule 6.25
Decision on the admission of guilt

(a) After having proceeded in accordance with article 65, paragraph 1, the Trial Chamber, in order to fulfil its functions under article 65, paragraph 4, may invite the views of the Prosecutor, the defence, and if applicable, the legal representative of the victims in accordance with rules (x) to (xx).

(b) The Trial Chamber shall then make its decision on the admission of guilt and shall give reasons for this decision, which shall be placed on the record.

Rule 6.26
Live testimony by means of audio or video link technology

(a) In accordance with article 69, paragraph 2, a Chamber may allow a witness to give viva voce (oral) testimony before the Chamber by means of video or audio technology, provided that the technology permits the witness to be examined by the Prosecutor, the defence, the victims or their legal representatives in accordance with rules X to XX, and by the Chamber itself, at the time that the witness so testifies.

(b) The examination of a witness under this rule shall be conducted in accordance with rules 6.1 to 6.29.

(c) The Chamber, with the assistance of the Registry, shall ensure that the venue chosen for the conduct of the video or audio link testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness. The venue chosen for the conduct of the video or audio link testimony may include an embassy, a consulate, an Office of the United Nations or a court facility.

Rule 6.27
Prior recorded testimony

(a) When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraph 2, allow the introduction of previously recorded video or audio testimony of a witness, or the transcript or other documented evidence of such testimony, provided that:

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[58] This provision will be reconsidered as part of the comprehensive discussion of the participation by victims in the proceedings before the Court.

(i) If the witness who gave the previously recorded testimony is not present before the Trial Chamber, both the Prosecutor and the defence had the opportunity to examine the witness during the recording; or

(ii) If the witness who gave the previously recorded testimony is present before the Trial Chamber, he or she does not object to the submission of the previously recorded testimony, and the Prosecutor, the defence, the victims or their legal representatives in accordance with rules X to XX, and the Chamber, have the opportunity to examine the witness during the proceedings.

Rule 6.28
Protective measures

(a) Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative participating in the proceedings pursuant to rules X to XX or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness or witnesses, pursuant to article 68, paragraphs 1 and 2. The Chamber shall obtain the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure.

(b) A motion or request under subparagraph (a) shall be governed by rule 6.12, provided that:

(i) Such a motion or request shall not be submitted *ex parte*;

(ii) A request by a witness or by a victim or his or her legal representative participating in the proceedings pursuant to rules X to XX shall be served on both the Prosecutor and the defence, each of whom shall have the opportunity to respond;

(iii) A motion or request affecting a particular witness or a particular victim shall be served on that witness or victim or his or her legal representative, in addition to the non-moving party, each of whom shall have the opportunity to respond;

(iv) When the Chamber proceeds on its own motion, notice and opportunity to respond shall be given to the Prosecutor and the defence, and to any particular witness or any particular victim or his or her legal representative, who would be affected by such protective measure; and

(v) A motion or request may be filed under seal, and if so filed shall remain sealed until otherwise ordered by a Chamber. Responses to motions or requests filed under seal shall also be filed under seal.

(c) A Chamber may hold a hearing on a motion or request under subparagraph (a), which hearing shall itself be conducted *in camera*, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness or witnesses, by ordering, *inter alia*:

(i) That the name of the victim, witness or other person at risk on account of testimony given by a witness or witnesses, or any information which could lead to his or her identification, be expunged from the Chamber's public records;

(ii) That the Prosecutor, the defence or any other person or party involved in the proceedings be prohibited from disclosing such information to a third party;

(iii) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audio-visual technology (in particular videoconferencing and closed-circuit television) and the exclusive use of the sound media;

(iv) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness or witnesses; or

(v) That a Chamber conduct part of its proceedings *in camera*.

Rule 6.29
Special measures

(a) Upon the motion of the Prosecutor or the defence, or upon the request of a witness or a victim or his or her legal representative participating in the proceedings pursuant to rules X to XX or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may, taking into account the views of the victim or witness, order special measures such as but not limited to measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2. The Chamber shall obtain the consent of the person in respect of whom the special measure is sought prior to ordering the special measure.

(b) A Chamber may hold a hearing on a motion or a request under subparagraph (a), if necessary *in camera* or *ex parte*, to determine whether to order any such special measure, including but not limited to an order that a counsel, a legal representative, a psychologist or a family member be permitted to attend during the testimony of the victim or the witness.

(c) For *inter partes* motions or requests filed under this rule, the provisions of rule 6.28, subparagraph (b) (ii) to (iv), shall apply *mutatis mutandis*.

(d) A motion or request filed under this rule may be filed under seal, and if so filed shall remain sealed until otherwise ordered by a Chamber. Any responses to *inter partes* motions or requests filed under seal shall also be filed under seal.

(e) Taking into consideration that violations of the privacy of a witness or victim may create risk to his or her security, a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence.

(f) Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others at risk on account of testimony given by a witness or witnesses may be negotiated with the

States by the Registrar on behalf of the Court. Such agreements may remain confidential.[59]

Rule 6.30[60]
Rules relating to participation of victims in the proceedings[61]

Rule [A]. Application for victim's participation in the proceedings

(a) In order to present their views and concerns, victims shall make written application to the Registrar, who shall transmit the application to the relevant Chamber. Subject to the provisions of the Statute, in particular article 68, paragraph 1, the Registrar shall provide a copy of the application to the Prosecutor and the defence, who shall be entitled to reply within a period of time to be set by the Chamber. Subject to the provisions of paragraph (b), the Chamber shall then specify the proceedings and manner in which participation is considered appropriate.

(b) The Chamber, on its own initiative or on the application of the Prosecutor or the defence, may reject the application if it considers that the person is not a victim or that the criteria set forth in article 68, paragraph 3, are not otherwise fulfilled. A victim whose written application has been rejected may file a new application later in the proceedings.

(c) An application referred to in this rule may also be made by a person acting with the consent of the victim, or a person acting on behalf of a victim, in the case of a victim who is a child or, when necessary, a victim who is disabled.

(d) Where there are a number of applications, the Chamber may consider the applications in such a manner so as to ensure the effectiveness of the proceedings and may issue one decision.

(e) An application may be made in a form other than in writing in accordance with rule xx.[62]

Rule [B]. Legal representative for victims

(a) A victim shall be free to choose a legal representative.

(b) Where there are a number of victims the Chamber may, for the purposes of ensuring the effectiveness of the proceedings, request the victims or particular groups of victims, if necessary with the assistance of the Registry, to choose a common legal representative or representatives. In facilitating the coordination of victim representation, the Registry may provide assistance, *inter alia*, by referring the victims to a list of lawyers, maintained by the Registry, or suggesting one or more common legal representatives.

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[59] Subparagraph (f) of rule 6.29 may be better placed in Part 4 of the rules of Procedure and Evidence.

[60] Considered by the Preparatory Commission at its fourth session.

[61] The placement of the following rules under Part 6 requires further consideration.

[62] The reference is to rule X in the working document on rules concerning reparations (rule 6.31). This paragraph may not be necessary when the scope and placement of rule X have been decided.

If the victims are unable to choose a common legal representative or representatives within a time limit that the Chamber may decide, the Chamber may request the Registrar to choose one or more common legal representatives.[63]

(c) The Chamber and the Registry shall take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of the victims, particularly as provided in article 68, paragraph 1, are represented and that any conflict of interest is avoided.

(d) A victim or group of victims who lack the necessary means to pay for a common legal representative chosen by the Court may receive assistance from the Registry, including, as appropriate, financial assistance.

(e) A legal representative of a victim or victims shall have the qualifications set forth in rule xx.[64]

Rule [C]. A legal representative's participation in the proceedings

(a) A Chamber may modify a previous ruling under rule [A].

(b) A legal representative of a victim shall be entitled to attend and participate in the proceedings in accordance with the terms of the Chamber's ruling and any modification thereof given under rules [A] and [B]. This shall include participation in hearings unless, in the circumstances of the case, the Chamber concerned is of the view that the representative's intervention should be confined to written observations.

The Prosecutor and the defence shall be allowed to reply to any oral or written observation by the legal representative for victims.

(c) When a legal representative attends and participates in accordance with this rule, and wishes to question a witness, expert or the accused, the legal representative must make application to the Chamber. The Chamber may require the legal representative to provide a written note of the questions and in that case the questions shall be communicated to the Prosecutor and, if appropriate, the defence, who shall be allowed to make observations within a period of time set by the Chamber.

The Chamber shall then issue a ruling on the request, taking into account the stage of the proceedings, the rights of the accused, the interests of witnesses, the need for a fair, impartial and expeditious trial and in order to give effect to article 68, paragraph 3. The ruling may include directions on the manner and order of the questions and the production of documents in accordance with the powers of the Chamber under article 64. The Chamber may, if it considers it appropriate, put the question to the witness, expert or accused on behalf of the victim's legal representative.

(d) For a hearing limited to reparations under article 75, the restrictions on questioning by the legal representative set forth in paragraph (c) of this rule shall not apply. In that case, the legal representative may, with the permission of the Chamber concerned, question witnesses, experts and the person concerned.

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[63] Aspects of the procedure for assignment of counsel to indigent persons, as provided for in rules relating to Part 4, in particular rule 5.2, could apply also in these cases.

[64] The reference is to the provision on qualification for defence counsel under Part 4.

Rule [D]. Notification to victims and legal representatives for victims[65]

(a) This rule on notification to victims and legal representatives for victims shall apply to all proceedings before the Court, except in proceedings provided for in Part 2.

(b) In order to allow victims to apply for participation in the proceedings in accordance with rule [A], the Court shall notify victims concerning the Prosecutor's decision not to initiate an investigation or not to prosecute pursuant to article 53. Such a notification shall be given to victims or their legal representatives who have already participated in the proceedings or, as far as possible, to those who have communicated with the Court in respect of the situation or case in question. The Chamber may order the measures outlined in paragraph (g) if it considers it appropriate in the particular circumstances.

(c) In order to allow victims to apply for participation in the proceedings in accordance with rule [A], the Court shall notify victims regarding its decision to hold a hearing to confirm charges pursuant to article 61. Such a notification shall be given to victims or their legal representatives who have already participated in the proceedings or, as far as possible, to those who have communicated with the Court in respect of the case in question.[66]

(d) When a notification for participation as provided for in paragraphs (b) or (c) has been given, any subsequent notification as referred to in paragraph (e) of this rule shall only be provided to victims or their legal representatives who may participate in the proceedings in accordance with a Chamber's ruling pursuant to rule [A] and any modification thereof.

(e) Where the Rules of Procedure and Evidence provide that victims or their legal representatives shall be notified of proceedings before the Court, or where the Court seeks their views or invites representations from them, the Registrar shall transmit the notification sufficiently in advance of the proceedings.

Where the Rules of Procedure and Evidence provide that submissions, motions or other documents shall be transmitted to victims or their legal representatives, the Registrar shall transmit them as soon as possible.

Where victims and their legal representatives have participated in a certain stage of the proceedings, the Registrar shall notify them as soon as possible of the decisions of the Court in those proceedings.

(f) Notifications as referred to in paragraphs (b), (c), (d) and (e) of this rule shall be in writing or, where written notification is not possible, in any other form as appropriate. The Registry shall keep a record of all notifications. Where necessary, the Registrar may seek the cooperation of States Parties in accordance with article 93, paragraph 1 (d) and (l).

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[65] Based upon this general rule on notification to victims and legal representatives for victims, all provisions in rules relating to Parts 5, 6, 8, 9 and 10 dealing with such notifications should be revisited.

[66] One delegation expressed the view that another notification for participation as referred to in this paragraph should be given before the commencement of the trial in cases where the hearing for confirmation of charges was held in the absence of the accused and the trial is held a long time thereafter.

(g) For notification as referred to in paragraph (c) of this rule and otherwise at the request of a Chamber of the Court, the Registrar shall take necessary measures to give adequate publicity to the proceedings. In doing so, the Registrar may seek in accordance with Part 9 the cooperation of relevant States Parties, and seek the assistance of intergovernmental organizations.

Rule 6.31[67]
Rules relating to reparations to victims[68]

Rule A. Procedure upon request

(a) A victim's request for reparations under article 75 shall be made in writing and filed with the Registrar. It shall contain the following particulars:

(i) The identity and address of the claimant;

(ii) A description of the injury, loss or harm;

(iii) The location and date of the incident and, to the extent possible, the identity of the person or persons the victim believes to be responsible for the injury, loss or harm;

(iv) Where restitution of assets, property or other tangible items is sought, a description of them;

(v) Claims for compensation;

(vi) Claims for rehabilitation and other forms of remedy;

(vii) To the extent possible any relevant supporting documentation, including names and addresses of witnesses.

(b) At commencement of the trial and subject to any protective measures, the Court shall ask the Registrar to provide notification of the request to the person or persons named in the request or identified in the charges and, to the extent possible, to any interested persons or any interested States.

Those notified shall file with the Registry any representation made under article 75, paragraph 3.

Rule B. Procedure on the motion of the Court

(a) In cases where the Court intends to proceed on its own motion pursuant to article 75, paragraph 1, it shall ask the Registrar to provide notification of its intention to the person or persons against whom the Court is considering making a determination, and to the extent possible, to victims, to interested persons and to interested States.

Those notified shall file with the Registry any representation made under article 75, paragraph 3.

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[67] Considered by the Preparatory Commission at its fourth session.

[68] Delegations agree that the Court, when making an order for reparations, will not require the standard of proof set forth in article 66, paragraph 3.

(b) If, as a result of notification under paragraph (a):

(i) A victim makes a request for reparations, that request will be determined as if it had been brought under rule A;

(ii) A victim requests that the Court does not make an order for reparations, the Court shall not proceed to make an individual order in respect of that victim.

Rule C. Publication of reparations proceedings

(a) Without prejudice to any other rules on notification of proceedings, the Registrar shall, insofar as practicable, notify the victims or their legal representatives and the person or persons concerned. The Registrar shall also, having regard to any information provided by the Prosecutor, take all the necessary measures to give adequate publicity of the reparations proceedings before the Court, to the extent possible, to other victims, to interested persons and interested States.

(b) In taking the measures described in paragraph (a), the Court may seek in accordance with Part 9 the cooperation of relevant States Parties, and seek the assistance of intergovernmental organizations in order to give publicity as widely as possible and by all possible means, to the reparations proceedings before the Court.

Rule D. Assessment of reparations

(a) Taking into account the scope and extent of any damage, loss or injury, the Court may award reparations on an individualized basis or, where it deems it appropriate, on a collective basis or both.

(b) At the request of victims or their legal representatives, or at the request of the convicted person, or on its own motion, the Court may appoint appropriate experts to assist it in determining the scope, extent of any damage, loss and injury to, or in respect of victims and to suggest various options concerning the appropriate types and modalities of reparations. The Court shall invite, as appropriate, victims or their legal representatives, the convicted person as well as interested persons and interested States to make observations on the reports of the experts.

(c) In all cases the Court shall respect the rights of victims and the convicted person.

Rule E. Trust Fund

(a) Individual awards for reparations shall be made directly against a convicted person.

(b) The Court may order that an award for reparations against a convicted person be deposited with the Trust Fund where at the time of making the order it is impossible or impracticable to make individual awards directly to each victim. The award for reparations thus deposited in the Trust Fund shall be separated from other resources of the Trust Fund and shall be forwarded to each victim as soon as possible.

(c) The Court may order that an award for reparations against a convicted person be made through the Trust Fund where the number of the victims and the

scope, forms and modalities of reparations makes a collective award more appropriate.

(d) Following consultations with interested States and the Trust Fund, the Court may order that an award for reparations be made through the Trust Fund to an intergovernmental, international or national organization approved by the Trust Fund.

(e) Other resources of the Trust Fund may be used for the benefit of victims subject to the provisions of article 79.

Rule F. Procedure under articles 57, paragraph 3 (e), and 75, paragraph 4

(a) The Pre-Trial Chamber, pursuant to article 57, paragraph 3 (e), or the Trial Chamber pursuant to article 75, paragraph 4, may, on its own motion or on the application of the Prosecutor or at the request of the victims or their legal representatives who have made a request for reparations or who have given a written undertaking to do so, determine whether measures should be requested.

(b) Notice is not required unless the Court determines, in the particular circumstances of the case, that notification could not jeopardize the effectiveness of the measures requested. In the latter case, the Registrar shall provide notification of the proceedings to the person against whom a request is made and so far as is possible to any interested persons or interested States.

If an order is made without prior notification, the relevant Chamber shall request the Registrar, as soon as is consistent with the effectiveness of the measures requested, to notify those against whom a request is made and, to the extent possible, to any interested persons or any interested States and invite them to make observations as to whether the order should be revoked or otherwise modified.

(c) The Court may make orders as to the timing and conduct of any proceedings necessary to determine these issues.

Rule X. Communications other than in writing

Where a person is unable, due to a disability or illiteracy, to make in writing a request, application, observation or other communication to the Court, the person may make such request, application, observation or communication in audio, video or other electronic form.

Rule 6.X
Place of the proceedings[69]

(a) The Court may, in a particular case, where it considers that it would be in the interests of justice, decide to sit in a State other than the host State.

(b) An application for changing the place where the Court sits may be filed at any time after the initiation of an investigation, either by the Prosecutor, the defence or by a majority of the judges of the Court. Such an application or recommendation shall be addressed to the Presidency. It shall be made in writing

[69] This rule does not affect whether the judges can travel outside the seat of the Court for other purposes.

and specify in which State the Court would sit. The Presidency shall satisfy itself of the views of the relevant Chamber.

(c) The Presidency shall consult the State where the Court intends to sit. If that State so agrees, the decision to sit in a State other than the host State shall be taken by the judges, at a plenary meeting, by a two-thirds majority.

[(d) deleted][70]

III. Offences against the administration of justice under article 70 (rules 6.32 to 6.39)

Rule 6.32
Exercise of jurisdiction

(a) The Court shall have the primary power to exercise jurisdiction in cases envisioned under article 70 in the case of a positive jurisdictional conflict with the host State. The Court shall give sympathetic consideration to a request from the host State for a waiver of its primary power to exercise jurisdiction in cases where the host State considers such a waiver to be of particular importance.

(b) In other cases, in making a decision whether or not to exercise jurisdiction, the Court may consider, in particular:

(i) The availability and effectiveness of prosecution in a State Party;

(ii) The seriousness of an offence;

(iii) The possible joinder of charges under article 70 with charges under articles 5 to 8;

(iv) The need to expedite proceedings;

(v) Links with an ongoing investigation or a trial before the Court; and

(vi) Evidentiary considerations.

(c) If the Court decides not to exercise its jurisdiction, it may request a State Party to exercise jurisdiction pursuant to article 70, paragraph 4.

(d) Before deciding whether to exercise jurisdiction, the Court may consult with States Parties that may have jurisdiction over the offence.

Rule 6.33
Application of the Statute and Rules

(a) Unless otherwise provided in paragraphs (b) and (c) of this rule, rule 6.32 and rules 6.34 to 6.39, the Statute and Rules of Procedure and Evidence shall apply

[70] Matters relating to the privileges, immunities and facilities set forth in article 48 should be dealt with in the agreement on the privileges and immunities of the Court, or in a special agreement with the State receiving the Court.

mutatis mutandis to the Court's investigation, prosecution and punishment of offences defined in article 70.[71]

(b) The provisions of Part 2, and any rules thereunder, shall not apply, with the exception of article 21.

(c) The provisions of Part 10, and any rules thereunder, shall not apply, with the exception of articles 103, 107, 109 and 111.

Rule 6.34
Statute of limitation[72]

(a) Offences defined in article 70 shall be subject to a period of limitation of (x) years from the date on which the offence was committed, provided that during this period no investigation or prosecution has been initiated.

The statute of limitation shall be interrupted, if an investigation or prosecution has been initiated during this period, either before the Court or by a State Party with jurisdiction over the case pursuant to article 70, paragraph 4 (a).

(b) Enforcement of sanctions imposed with respect to offences defined in article 70 shall be subject to a period of limitation of (x) years from the date on which the sanction has become final.

The statute of limitation shall be interrupted with the detention of the convicted person or while the person concerned is staying outside the territory of the States Parties.

Rule 6.35
Investigation, prosecution and trial

(a) The Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70, on his or her own initiative, on the basis of information communicated by a Chamber of the Court or any reliable source.[73]

(b) Articles 53 and 59, and any rules thereunder, shall not apply.[74]

(c) For purposes of article 61, the Pre-Trial Chamber may make any of the determinations set forth in that article on the basis of written submissions, without a hearing, unless the interest of justice otherwise requires.

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[71] This rule, as well as other rules relating to article 70, will need to be revised after all the rules in the Rules of Procedure and Evidence have been completed.

[72] The statute of limitation is intended to apply only when the Court chooses to exercise jurisdiction in accordance with rule 6.32. Further, it is not meant to affect the right to seek revision in accordance with article 84. Consideration should be given to whether these issues need to be reflected in the rule. The question was also raised as to how the initiation of an investigation before the Court should be established.

[73] Consideration should be given to whether further preconditions or procedural steps are called for.

[74] Consideration should be given as to whether article 54, paragraph 2 (b), should also be excluded.

(d) With the consent of all parties, a Trial Chamber may, as appropriate, direct that there be joinder of charges under article 70 with charges under articles 5 to 8.

Rule 6.36
Penalties

(a) The fine imposed under article 70, paragraph 3, may not exceed (x) euros, or the equivalent amount in any other currency.

(b) Each offence may be separately fined, and those fines may be cumulative.

(c) Article 77, and any rules thereunder, shall not apply, with the exception of an order of forfeiture under article 77, paragraph 2 (b), which may be ordered in addition to imprisonment or a fine imposed for an offence as defined in article 70, paragraph 1 (f).[75]

Rule 6.37
International cooperation and judicial assistance

(a) With regard to offences under article 70, the Court may request a State to provide any form of international cooperation or judicial assistance corresponding to those forms set forth in Part 9. In any such request, the Court shall indicate that the basis for the request is an investigation or prosecution of offences under article 70.

(b) The conditions for providing international cooperation or judicial assistance to the Court with respect to offences under article 70 shall be those set forth in article 70, paragraph 2.

Rule 6.38
Ne bis in idem

In respect of offences under article 70, no person shall be tried before the Court with respect to conduct which formed the basis of an offence for which the person has already been convicted or acquitted by the Court or another court.

Rule 6.39
Immediate arrest

In the case of an alleged offence under article 70 committed in the presence of a Chamber of the Court, the Prosecutor may orally request that Chamber to order the immediate arrest of the person concerned.

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[75] Consideration should be given as to whether this provision should apply also to bribery of a person not being an official of the Court.

IV. Misconduct before the Court under article 71 (rules 6.40 to 6.42)

Rule 6.40
Disruption of proceedings

Having regard to article 63, paragraph 2, the presiding judge of the Chamber of the Court dealing with the matter may, after giving a warning, order a person disrupting the Court's proceedings to leave or be removed from the courtroom, or, in case of repeated misconduct, permanent or temporary interdiction from attending the proceedings.

Rule 6.41
Refusal to comply with a direction by the Court

(a) When the misconduct consists of deliberate refusal to comply with an oral or written direction by the Court, not covered by rule 6.40, and that direction is accompanied by a warning of sanctions in case of breach, the presiding judge of the Chamber of the Court dealing with the matter may order the permanent or temporary interdiction from the proceedings or, if the misconduct is of a more serious nature, impose a fine.

(b) If the person committing misconduct as described in paragraph (a) is an official of the Court, or a defence counsel, or a legal representative of victims, the presiding judge of the Chamber of the Court dealing with the matter may also order permanent or temporary interdiction from the exercise of the person's function before the Court or any other administrative sanction as provided for in rules (x) to (xx).[76]

(c) A fine imposed under paragraph (a) or (b) of this rule shall not exceed (x) euros, or the equivalent amount in any currency, provided that in cases of continuing misconduct, a new fine may be imposed on each day that the misconduct continues, and such fines shall be cumulative.

(d) The person concerned shall be given an opportunity to be heard before a sanction for misconduct as described in this rule is imposed.

Rule 6.42
Concurrence

If a conduct covered by article 71 also constitutes one of the offences defined in article 70, the Court shall proceed in accordance with article 70 and rules 6.32 to 6.39.

[76] The reference is to rules on administrative sanctions underpinning Part 4 of the Statute.

Part 7*
Penalties

Rules relating to article 77 (Applicable penalties), article 78 (Determination of sentence) and article 79 (Trust Fund)

Rule 7.1

1. In its determination of the sentence pursuant to article 78, paragraph 1, the Court shall:

(a) Bear in mind that the totality of any sentence of imprisonment and fine, as the case may be, imposed under article 77 must reflect the culpability of the convicted person;

(b) Balance all the relevant factors, including any mitigating and aggravating factors and consider the circumstances both of the convicted person and of the crime;

(c) In addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.

2. In addition to the factors mentioned above, the Court shall take into account, as appropriate:

(a) Mitigating circumstances such as:

(i) The circumstances falling short from constituting grounds for exclusion of criminal responsibility, such as substantially diminished mental capacity or duress;

(ii) The convicted person's conduct after the act, including any efforts by the person to compensate the victims and any cooperation with the Court;

(b) As aggravating circumstances:

(i) Any relevant prior criminal convictions for crimes under the jurisdiction of the Court or of a similar nature;

(ii) Abuse of power or official capacity;

(iii) Commission of the crime where the victim is particularly defenceless;

(iv) Where the crime was committed with particular cruelty or there were multiple victims;

(v) Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3, of the Statute;

* Rules relating to Part 7 were not considered by the Preparatory Commission at its fourth session.

(vi) Other circumstances which, although not enumerated above, by virtue of their nature are similar to those mentioned.

3. Life imprisonment may be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person, as evidenced by the existence of one or more aggravating circumstances.

Rule 7.2

1. In determining whether to order a fine under article 77, paragraph 2 (a), and in fixing the amount of the fine, the Court shall determine whether imprisonment is a sufficient penalty. The Court shall take into due consideration the financial capacity of the convicted person, including any orders for forfeiture in accordance with article 77, paragraph 2 (b), and, as appropriate, any orders for reparation in accordance with article 75. The Court shall take into account, in addition to the factors referred to in rule 7.1, whether and to what degree the crime was motivated by personal financial gain.

2. A fine imposed under article 77, paragraph 2 (a), shall be set at an appropriate level. To this end, the Court shall, in addition to the factors referred to above, in particular take into consideration the damage and injuries caused as well as the proportionate gains derived from the crime by the perpetrator. Under no circumstances may the total amount exceed 75 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependants.

3. In imposing a fine, the Court shall allow the convicted person a reasonable period in which to pay the fine. The Court may provide for payment of a lump sum or by way of instalments during that period.

4. In imposing a fine, the Court may, as an option, calculate it according to a system of daily fines. In such cases, the minimum duration shall be 30 days and the maximum duration five years. The Court shall decide the total amount in accordance with paragraphs 1 and 2 of this rule. It shall determine the amount of daily payment in the light of the individual circumstances of the convicted person, including the financial needs of his or her dependants.

5. If the convicted person does not pay the fine imposed in accordance with the conditions set above, appropriate measures may be taken by the Court pursuant to rule [...] and in accordance with article 109 of the Statute. Where, in cases of continued wilful non-payment, the Presidency, on its own motion or on the request of the Prosecutor, is satisfied that all available enforcement measures have been exhausted, it may as a last resort extend the term of imprisonment for a period not to exceed a quarter of such term or five years, whichever is less. In the determination of such period of extension, the Presidency shall take into account the amount of the fine, imposed and paid. Any such extension shall not apply in the case of life imprisonment. The extension may not lead to a total period of imprisonment in excess of 30 years.

6. In order to determine whether to order an extension and the period involved, the Presidency shall hold session *in camera* for the purpose of obtaining the views

of the sentenced person and the Prosecutor. The sentenced person shall have the right to be assisted by counsel.

7. In imposing a fine, the Court shall warn the convicted person that failure to pay the fine in accordance with the conditions set out above, may result in an extension of the period of imprisonment as described in this rule.

Rule 7.3

1. In accordance with article 76, paragraphs 2 and 3 and rules 6.1 (e) and 6.21, at any hearing to consider an order of forfeiture, a Chamber of the Court shall hear evidence as to the identification and location of specific proceeds, property or assets which have been derived directly or indirectly from the crime.

2. If before or during the hearing, a Chamber of the Court becomes aware of any bona fide third party who appears to have an interest in relevant proceeds, property or assets, it may give notice to that third party.

3. The Prosecutor, the convicted person and any bona fide third party with an interest in the relevant proceeds, property or assets may submit evidence relevant to the issue.

4. After considering any evidence submitted, a Chamber of the Court may issue an order of forfeiture in relation to specific proceeds, property or assets if it is satisfied that these have been derived directly or indirectly from the crime.

Rule 7.4

Before making an order pursuant to article 79, paragraph 2, a Chamber of the Court may request the representatives of the Fund to submit written or oral observations to it.

Part 8
Appeal and revision* ††

Section 1
General provisions

Rule 8.1
Rules governing proceedings in the Appeals Chamber

Parts 5 and 6 of the Statute and rules Y to YY governing proceedings and the submission of evidence in the Pre-Trial and Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.

Section 2
Appeals against convictions, acquittals, sentences and reparation orders

Rule 8.2
Appeal

(a) Subject to sub-rule (b), an appeal against a decision of conviction or acquittal under article 74, a sentence under article 76 or a reparation order under article 75 may be filed not more than 30 days from the date on which the party filing the appeal is notified of the decision, the sentence or the reparation order.

(b) The Appeals Chamber may extend the period set out in sub-rule (a), for good cause, upon the application of the party seeking to file the appeal.

(c) The appeal shall be filed with the Registrar.

(d) If an appeal is not filed as set out in sub-rules (a) to (c), the decision, the sentence or the reparation order of the Trial Chamber shall become final.

Rule 8.3
Procedure for the appeal

(a) Upon the filing of an appeal under rule 8.2, the Registrar shall transmit the trial record to the Appeals Chamber.

(b) The Registrar shall notify all parties who participated in the proceedings before the Trial Chamber that an appeal has been filed.

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* The Preparatory Commission, at its fourth session, considered rules relating to Part 8.

†† Rules on Part 8 need further discussion.

Rule 8.4
Discontinuance of the appeal

(a) Any party who has filed an appeal may discontinue the appeal at any time before judgement has been delivered. In such case, it shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

(b) If the Prosecutor has filed an appeal on behalf of a convicted person in accordance with article 81, paragraph 1 (b), before filing any notice of discontinuance, the Prosecutor shall inform the convicted person that he or she intends to discontinue the appeal in order to give him or her the opportunity to continue the appeal proceedings.

Rule 8.5
Judgement on appeals against reparation orders

(a) The Appeals Chamber may confirm, reverse or amend a reparation order under article 75.

(b) The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraphs 4 and 5.

Section 3
Appeals against other decisions

Rule 8.6
Appeals that do not require the leave of the Court

(a) An appeal may be filed under article 81, paragraph 3 (c) (ii), or article 82, paragraph 1 (a) or (b), not more than five days from the date upon which the party filing the appeal is notified of the decision.

(b) An appeal may be filed under article 82, paragraph 1 (c), not more than two business days[78] from the date upon which the party filing the appeal is notified of the decision.

(c) Rule 8.2, subparagraphs (c) and (d), shall apply to appeals filed under subparagraphs (a) and (b).

Rule 8.7
Appeals that require leave of the Court

(a) When a party wishes to appeal a decision under article 82, paragraph 1 (d), or article 82, paragraph 2, that party shall, within five days of being notified of that decision, make a written application to the Chamber that gave the decision, setting out the reasons for the request for leave to appeal.

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[78] Some delegations expressed their preference for a longer deadline.

(b) The Chamber shall render a decision and shall notify all parties who participated in the proceedings that gave rise to the decision referred to in subparagraph (a).[79]

Rule 8.8
Procedure for the appeal

(a) As soon as an appeal has been filed under rule 8.6 or as soon as leave to appeal has been granted under rule 8.7, the Registrar shall transmit to the Appeals Chamber the record of the proceedings of the Chamber that made the decision that is the subject of the appeal.

(b) The Registrar shall give notice of the appeal to all parties who participated in the proceedings before the Chamber that gave the decision that is the subject of the appeal, unless they have already been notified by the Chamber under rule 8.7 (b).

(c) The appeal proceedings shall be in writing unless the Appeals Chamber decides to convene a hearing.

(d) The appeal shall be heard as expeditiously as possible.

(e) When filing the appeal, the party bringing the appeal may request that the appeal have suspensive effect in accordance with article 82, paragraph 3.

Rule 8.9
Discontinuance of the appeal

Any party who has filed an appeal under rule 8.6 or who has obtained the leave of a Chamber to appeal a decision under rule 8.7 may discontinue the appeal at any time before judgement has been delivered. In such a case, it shall file with the Registrar a written notice of discontinuance of appeal. The Registrar shall inform the other parties that such a notice has been filed.

Rule 8.10
Judgement on the appeal

(a) The Appeals Chamber may confirm, reverse or amend a decision appealed against under section 3.

(b) The judgement of the Appeals Chamber shall be delivered in accordance with article 83, paragraph 4.

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[79] There is a need to clarify the concept of "party" and ensure consistency of terminology throughout the rules or procedure.

Section 4
Revision of conviction or sentence

Rule 8.11
Application for revision

(a) An application for revision provided for in article 84, paragraph 1, shall be in writing and shall set out the grounds on which the revision is sought. It shall as far as possible be accompanied by supporting material.

(b) The determination on whether the application is meritorious shall be taken by a majority of the judges of the Appeals Chamber and shall be supported by reasons in writing.

(c) Notification of the decision shall be sent to the applicant and, as far as possible, to all the parties who participated in the initial decision proceedings.

Rule 8.12
Determination on revision

(a) On a date which it shall determine and shall communicate to the applicant and to all those having received notification under rule 8.11 (c), the relevant Chamber shall hold a hearing to determine whether the conviction or sentence should be revised.

(b) For the conduct of the hearing, the relevant Chamber shall exercise, *mutatis mutandis*, all the powers of the Trial Chamber pursuant to Part 6 of the Statute and rules 6.1 to 6.42.

(c) The determination on revision shall be governed by the applicable provisions of article 83, paragraph 4.

Section 5
Compensation to an arrested or convicted person

Rule 8.13

(a) Anyone wishing to obtain compensation on any of the grounds indicated in article 85 shall submit a request, in writing, to the Presidency, which shall designate a chamber composed of three judges of the Court to consider the request. None of these judges may have participated in any earlier judgement of the Court regarding the person making the request.

(b) The request for compensation shall be submitted not more than six months from the date the person making the request was notified of the Court's decision concerning:

(i) The unlawfulness of the arrest or detention under article 85, paragraph 1;

(ii) The reversal of the conviction under article 85, paragraph 2;

(iii) The existence of a grave and manifest miscarriage of justice under article 85, paragraph 3.

(c) The request shall contain the grounds and the amount of compensation requested.

(d) The person requesting compensation shall be entitled to legal assistance when submitting the request.

Rule 8.14

(a) The request for compensation and any other written observation by the person filing the request shall be transmitted to the Prosecutor, who shall have an opportunity to respond in writing. Any observations by the Prosecutor shall be notified to the person filing the request.

(b) The Chamber designated under rule 8.13 (a) may either hold a hearing or determine the matter on the basis of the request and any written observations by the Prosecutor and the person filing the request. A hearing shall be held if the Prosecutor or the person filing the request so requests.

(c) The decision shall be taken by the majority of the judges. The decision shall be notified to the Prosecutor and to the person filing the request.

Rule 8.15

In establishing the amount of any compensation in conformity with article 85, paragraph 3, the Chamber designated under rule 8.13 (a) shall take into consideration the consequences which the grave and manifest miscarriage of justice has had for the personal, family, social and professional situation of the person filing the request.

Part 9*
International cooperation and judicial assistance

Rules relating to article 87 (Requests for cooperation: general provisions)

Rule 9.1
Organs of the Court responsible for the transmission and receipt of any communications relating to international cooperation and judicial assistance

(a) Upon and subsequent to the establishment of the Court, the Registrar shall obtain from the Secretary-General of the United Nations any communication made by States pursuant to article 87, paragraphs 1 (a) and 2.

(b) The Registrar shall transmit the requests for cooperation made by the Chambers of the Court and shall receive the responses, information and documents from requested States. The Office of the Prosecutor shall transmit the requests for cooperation by the Prosecutor and shall receive the responses, information and documents from requested States.

(c) The Registrar shall be the recipient of any communication from States concerning subsequent changes in the designation of the national channels charged with receiving requests for cooperation, as well as of any change in the language in which requests for cooperation should be made, and shall, upon request, make such information available to States Parties as may be appropriate.

(d) The provisions of sub-rule (b) of the present rule are applicable *mutatis mutandis* where the Court requests information, documents or other forms of cooperation and assistance from an intergovernmental organization.

(e) The Registrar shall transmit any such communications referred to in sub-rules (a) and (c) and rule 9.2 (b), as appropriate, to the Presidency or the Office of the Prosecutor, or both.

Rule 9.2
Channels of communication

(a) Communications concerning the national authority charged with receiving requests for cooperation made upon ratification, acceptance, approval or accession shall provide all relevant information of such authorities.

(b) When an intergovernmental organization is asked to assist the Court under article 87, paragraph 6, the Registrar shall, when necessary, seek the advice of its designated channel of communication and obtain all relevant information thereon.

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* The Preparatory Commission, at its fourth session, considered rules relating to Part 9.

Rule 9.3
Language nominated by States Parties under article 87, paragraph 2

(a) When a requested State Party has more than one official language, it may indicate upon ratification, acceptance, approval or accession that requests for cooperation and any supporting documents can be drafted in any one of its official languages.

(b) When the requested State Party has not chosen a language for communication with the Court upon ratification, acceptance, accession or approval, the request for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court pursuant to article 87, paragraph 2.

Rule 9.4
Language of requests directed to States not party to the Statute

When a State not party to the Statute has agreed to provide assistance to the Court under article 87, paragraph 5, and has not made a choice of language for such requests, the requests for cooperation shall either be in or be accompanied by a translation into one of the working languages of the Court.

Rule 9.5
Changes in the channels of communication or the languages of requests for cooperation

(a) Changes concerning the channel of communication or the language a State has nominated under article 87, paragraph 2, shall be notified to the Registrar in writing at the earliest opportunity.

(b) Such changes shall take effect in respect of requests for cooperation made by the Court at a time agreed between the Court and the State or, in the absence of such an agreement, 45 days after the Court has received notification, and in all cases without prejudice to current requests or requests in progress.

Rules relating to article 89 (Surrender of persons to the Court)

Rule 9.6
Challenge to admissibility of a case before a national court

When a situation described in article 89, paragraph 2, arises, and without prejudice to the provisions of article 19 and of rules (n) to (mm) on procedures applicable to challenges to the jurisdiction of the Court or the admissibility of a case, the Chamber of the Court dealing with the case, if the admissibility ruling is still pending, shall take steps to obtain from the requested State all the relevant information about the *ne bis in idem* challenge brought by the person.

Rule 9.7
Request for transit under article 89, paragraph 3 (e)

(a) In situations described in article 89, paragraph 3 (e), the Court may transmit the request for transit by any medium capable of delivering a written record.

(b) When the time limit provided for in article 89, paragraph 3 (e), has expired and the concerned person has been released, such a release is without prejudice to a subsequent arrest of the concerned person in accordance with the provisions of article 92 or article 89.

Rule 9.8
Possible temporary surrender

Following the consultations referred to in article 89, paragraph 4, the requested State may temporarily surrender the person sought in accordance with conditions determined between the requested State and the Court. In such case the person shall be kept in custody during his or her presence before the Court and shall be transferred to the requested State once his or her presence before the Court is no longer required, at the latest when the proceedings have been completed.

Rule 9.9
Arrangements for surrender

(a) The requested State shall immediately inform the Registrar when the person sought by the Court is available for surrender.

(b) The person shall be surrendered to the Court by the date and in the manner agreed upon between the authorities of the requested State and the Registrar.

(c) If circumstances prevent the surrender of the person by the date agreed, the authorities of the requested State and the Registrar shall agree upon a new date and manner by which the person shall be surrendered.

(d) The Registrar shall maintain contact with the authorities of the host State in relation to the arrangements for the surrender of the person.

Rule YY (rule 9.9 *bis*)

(a) Subject to paragraph (b), where a person surrendered to the Court is released from the custody of the Court because the Court does not have jurisdiction, the case is inadmissible under article 17, paragraph 1 (b), (c) or (d), the charges have not been confirmed under article 61, the person has been acquitted at trial or on appeal, or for any other reason, the Court may as soon as possible make such arrangements as it considers appropriate for the transfer of the person, taking into account the views of the person, to a State which is obliged to receive him or her, to another State which agrees to receive him or her, or to a State which has requested his or her extradition with the consent of the original surrendering State. In this

case, the host State shall facilitate the transfer in accordance with the agreement referred to in article 3, paragraph 2, and the related arrangements.[80]

(b) Where the Court has determined that the case is inadmissible under article 17, paragraph 1 (a), the Court shall make arrangements, as appropriate, for the transfer of the person to a State whose investigation or prosecution has formed the basis of the successful challenge to admissibility, unless the State that originally surrendered the person requests his or her return.

Rule relating to article 90 (Competing requests)

Rule 9.10
Competing requests in the context of a challenge to the admissibility of the case

In situations described in article 90, paragraph 8, the requested State shall provide the notification of its decision to the Prosecutor in order to enable him or her to act in accordance with article 19, paragraph 10.

Rule relating to article 91 (Contents of request for arrest and surrender)

Rule 9.11
Translation of documents accompanying request for surrender

For the purposes of article 67, paragraph 1 (a), and in accordance with rule 5.15 (a), the request under article 91 shall be accompanied, as appropriate, by a translation of the warrant of arrest or of the judgement of conviction and by a translation of the text of any relevant provisions of the Statute, in a language that the person fully understands and speaks.

Rules relating to article 92 (Provisional arrest)

Rule 9.12
Time limit for submission of documents after provisional arrest

For the purposes of paragraph 3 of article 92, the time limit for receipt by the requested State of the request for surrender and the documents supporting the request shall be 60 days from the date of the provisional arrest.

[80] An issue was raised whether the rule should further clarify that a person should not be extradiated to a third Sate without the consent of the original surrendering State.

Rule 9.13
Transmission of documents supporting the request

When a person has consented to surrender in accordance with the provisions of article 92, paragraph 3, and the requested State proceeds to surrender the person to the Court, the Court shall not be required to provide the documents described in article 91 unless the requested State otherwise requests.

Rules relating to article 93 (Other forms of cooperation)

Rule 9.14
Instruction on self-incrimination accompanying request for witness

When making a request under article 93, paragraph 1 (e), with respect to a witness, the Court shall annex an instruction, concerning the rule relating to self-incrimination (rule 6.9), to be provided to the witness in question, in a language that the person fully understands and speaks.[81]

Rule 9.15
Transfer of a person in custody

(a) Transfer of a person in custody to the Court in accordance with article 93, paragraph 7, shall be arranged by the national authorities concerned in liaison with the Registrar and the authorities of the host State.

(b) The Registrar shall ensure the proper conduct of the transfer, including the supervision of the person while in the custody of the Court.

(c) The person in custody before the Court shall have the right to raise matters concerning the conditions of his or her detention with the relevant Chamber of the Court.

(d) In accordance with article 93, paragraph 7 (b), when the purposes of the transfer have been fulfilled, the Registrar shall arrange for the return of the person in custody to the requested State.

Rule 9.16
Assurance provided by the Court under article 93, paragraph 2

The Chamber of the Court dealing with the case, on its own motion or at the request of the Prosecutor, defence or witness or expert concerned, may decide, after taking into account the views of the Prosecutor and the witness or expert concerned, to provide the assurance described in article 93, paragraph 2. If the Chamber of the Court considers it appropriate, the Chamber may invite and consider the views of the victims or their legal representatives before deciding on the assurance.

[81] This rule should be reconsidered in the light of the discussion on rule 6.9.

Rule 9.17
Cooperation requested from the Court

(a) In accordance with article 93, paragraph 10, and consistent with article 96, *mutatis mutandis*, a State may transmit to the Court a request for cooperation or assistance to the Court, either in or accompanied by a translation into one of the working languages of the Court.[82]

(b) Requests described in sub-rule (a) are to be sent to the Registrar, which shall transmit them, as appropriate, either to the Prosecutor or to the Chamber concerned.

(c) If protective measures within the meaning of article 68 have been adopted, the Prosecutor or Chamber, as appropriate, shall consider the views of the Chamber which ordered the measures and the relevant victim or witness, before deciding on the request.

(d) If the request relates to documents or evidence as described in article 93, subparagraph 10 (b) (ii), the Prosecutor or Chamber, as appropriate, shall obtain the written consent of the relevant State before proceeding with the request.

(e) When the Court decides to grant the request for cooperation or assistance from a State, the request shall be executed, insofar as possible, following the procedure outlined therein by the requesting State and permitting persons specified in the request to be present.

Rule 9.18

(a) The Chamber of the Court that is considering the case may order the temporary transfer from the State of enforcement to the seat of the Court of any person sentenced by the Court whose testimony or other assistance is necessary to the Court. The provisions of article 93, paragraph 7, shall not apply.

(b) The Registrar shall ensure the proper conduct of the transfer, in liaison with the authorities of the State of enforcement. When the purposes of the transfer have been fulfilled, the Court shall return the sentenced person to the State of enforcement.

(c) The person shall be kept in custody during his or her presence before the Court. The entire period of detention spent at the seat of the Court shall be deducted from the sentence remaining to be served.

[82] The question whether the paragraph should refer to working or official languages will be reconsidered in the light of the outcome of the discussions on Part 4.

Rule relating to article 98 (Cooperation with request to waiver of immunity and consent to surrender)

Rule 9.19
Application of article 98

When a requested State notifies the Court that a request for surrender or assistance raises a problem of execution in respect of article 98, the requested State shall provide any information relevant to assist the Court in the application of article 98. Any concerned third State or sending State may provide additional information to assist the Court.[83]

Rules relating to article 101 (Rule of speciality)

Rule 9.20
Providing views on article 101, paragraph 1, issues

A person surrendered to the Court may provide views on a perceived violation of the provisions of article 101, paragraph 1.

Rule 9.21
Extension of the surrender

When the Court has requested a waiver of the requirements of article 101, paragraph 1, the requested State may ask the Court to obtain and provide the views of the person surrendered to the Court.

[83] One delegation may propose an addition to the rule related to article 98.

Part 10*
Enforcement

Rules relating to article 103 (Role of States in enforcement of sentences of imprisonment) and article 104 (Change in designation of State of enforcement)

Rule 10.1
Communications between the Court and States

Unless the context otherwise requires, rules x to xx[84] shall apply, as appropriate, to communications between the Court and a State on matters relating to enforcement of sentences.

Rule 10.2
Organ responsible under Part 10

Unless provided otherwise in the present rules, the functions of the Court under Part 10 of the Statute shall be exercised by the Presidency.

Rule 10.3
List of States of enforcement

(a) A list of States that have indicated their willingness to accept sentenced persons shall be established and maintained by the Registrar.

(b) The Presidency shall not include a State on the list provided for in article 103, paragraph (1), if it does not agree with the conditions that such a State attaches to its acceptance.

The Presidency may request any additional information from that State prior to taking a decision.

(c) A State that has attached conditions of acceptance may at any time withdraw such conditions. Any amendments or addition to such conditions shall be subject to confirmation by the Presidency.

(d) A State may at any time inform the Registrar of its withdrawal from the list. Such withdrawal shall not affect the enforcement of the sentences in respect of persons that the State has already accepted.

(e) The Court may enter bilateral arrangements with States with a view to establishing a framework for the acceptance of prisoners sentenced by the Court. Such arrangements shall be consistent with the Statute.

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* The Preparatory Commission, at its fourth session, considered rules relating to Part 10.

[84] Rules concerning the implementation of Part 9.

Rule 10.4
Principles of equitable distribution

Principles of equitable distribution for purposes of article 103, paragraph 3, shall include:

(a) The principle of equitable geographical distribution;

(b) The need to afford each State on the list an opportunity to receive sentenced persons;

(c) The number of sentenced persons already received by that State and other States of enforcement;

(d) Any other relevant factors.

Rule 10.5
Consideration of delivery of sentenced person to State of enforcement

The delivery of a sentenced person from the Court to the designated State of enforcement shall not take place unless the decision on the conviction and the decision on the sentence have become final.

Rule 10.6
Views of sentenced person

(a) The Presidency shall give notice in writing to the sentenced person that it is addressing the designation of a State of enforcement. The sentenced person shall, within such time as the Presidency shall prescribe, present in writing any views on the question to the Presidency.

(b) The Presidency may allow the sentenced person to make oral presentations.

(c) The Presidency shall allow the sentenced person:

(i) To be assisted, as appropriate, by a competent interpreter and benefit from any translation necessary for the presentation of his or her views;

(ii) To be granted adequate time and facilities necessary to prepare for the presentation of his or her views.

Rule 10.7
Information relating to designation

When the Presidency notifies the designated State of its decision, it shall also communicate the following information and documents:

(a) The name, nationality, date and place of birth of the sentenced person;

(b) A copy of the final judgement of conviction and of the sentence imposed;

(c) The length and commencement date of the sentence and the time remaining to be served;

(d) After having heard the views of the sentenced person, any necessary information concerning the state of his or her health, including any medical treatment that he or she is receiving.

Rule 10.8
Rejection of designation in a particular case

Where a State in a particular case rejects the designation by the Presidency, the Presidency may designate another State.

Rule 10.9
Delivery of sentenced person to State of enforcement

(a) The Registrar shall inform the Prosecutor and the sentenced person of the State designated to enforce the sentence.

(b) The sentenced person shall be delivered to the State of enforcement as soon as possible after the designated State of enforcement accepts.

(c) The Registrar shall ensure the proper conduct of the transfer in consultation with the authorities of the State of enforcement and the host State.

Rule 10.10
Transit

(a) No authorization is required if the sentenced person is transported by air and no landing is scheduled on the territory of the transit State. If an unscheduled landing occurs on the territory of the transit State, that State shall, to the extent possible under the procedure of national law, detain the sentenced person in custody until a request for transit as provided in paragraph (b) of the rule or a request under article 89, paragraph 1, or article 92 is received.

(b) To the extent possible under the procedure of national law, States Parties shall authorize the transit of a sentenced person through their territories and the provisions of article 89, paragraph 3 (b) and (c), and articles 105 and 108 and any rules relating thereto shall, as appropriate, apply. A copy of the final judgement of conviction and of the sentence imposed shall be attached to such request for transit.

Rule 10.11
Costs

(a) The ordinary costs for the enforcement of the sentence in the territory of the State of enforcement shall be borne by that State.

(b) Other costs, including those for the transport of the sentenced person and those referred to in article 100, paragraph 1 (c), (d) and (e), shall be borne by the Court.

Rule 10.12
Change in designation of State of enforcement

(a) The Presidency, acting on its own motion or at the request of the sentenced person or the Prosecutor, may at any time act in accordance with article 104, paragraph 1.

(b) The request of the sentenced person or of the Prosecutor shall be made in writing and shall set out the grounds upon which the transfer is sought.

Rule 10.13
Procedure for change in designation of State of enforcement

1. Before deciding to change the designation of a State of enforcement, the Presidency may:

(a) Request views from the State of enforcement;

(b) Consider written or oral presentations of the sentenced person and the Prosecutor;

(c) Consider written or oral expert opinion concerning, *inter alia*, the sentenced person;

(d) Obtain any other relevant information from any reliable sources.

2. The provisions of rule 10.6 (c) shall, as appropriate, apply.

Rule 10.14

If the Presidency refuses to transfer, it shall as soon as possible inform the sentenced person, the Prosecutor and the Registrar of its decision and of the reasons therefor. It shall also inform the State of enforcement.

Rule relating to article 105 (Enforcement of the sentence)

Rule 10.15

(a) For the conduct of the hearing provided for in rule 8.12, the competent Chamber of the Court shall issue its order sufficiently in advance to enable the transfer of the sentenced person to the seat of the Court, as appropriate.

(b) The determination of the Court shall be notified without delay to the State of enforcement.

(c) The provisions of rule 10.9 (c) shall be applicable.

Rule relating to article 106 (Supervision of enforcement of sentences and conditions of imprisonment)[85]

Rule 10.16

1. In order to supervise the enforcement of sentences of imprisonment, the Presidency:

(a) Shall, in consultation with the State of enforcement, ensure that in establishing appropriate arrangements for the exercise by any sentenced person of his or her right to communicate with the Court about the conditions of imprisonment, the provisions of article 106, paragraph 3, shall be respected;

(b) May, when necessary, request any information, report or expert opinion from the State of enforcement or from any reliable sources;

(c) May, where appropriate, delegate a judge of the Court or a member of the staff of the Court who will be responsible, after notifying the State of enforcement, for meeting the sentenced person and hearing his or her views, without the presence of national authorities;

(d) May, where appropriate, give the State of enforcement an opportunity to comment on the views expressed by the sentenced person under sub-rule (c).

2. When a sentenced person is eligible for a prison programme or benefit available under the domestic law of the State of enforcement which may entail some activity outside the prison facility, the State of enforcement shall communicate that fact to the Presidency, together with any relevant information or observation, to enable the Court to exercise its supervisory function.

Rule relating to article 107 (Transfer of the person upon completion of sentence)

Rule 10.17

For the purpose of enforcement of fines and forfeiture measures and of reparation measures ordered by the Court, the Presidency may, at any time or at least 30 days before the scheduled completion of the sentence served by the sentenced person, request the State of enforcement to transmit to it the relevant information concerning that State's intention to authorize the person to remain in its territory or the location where it intends to transfer the person.

[85] The issue of pre-trial regulations concerning the detention in custody in a prison facility made available by the host State, together with those concerning the detention of sentenced persons who remain in a prison facility made available by the host State, should be envisaged in the host arrangement. This arrangement should provide for arrangements concerning the exercise of the right of a detainee to file a complaint to a judge of the Court about the detention conditions.

Rules relating to article 108 (Limitation on the prosecution or punishment of other offences)

Rule 10.18

(a) For the application of article 108, when the State of enforcement wishes to prosecute, try or enforce a sentence against the sentenced person for any conduct engaged in prior to that person's transfer, it shall notify its intention to the Presidency and transmit to it the following documents:

(i) A statement of the facts of the case and their legal characterization;

(ii) A copy of any applicable legal provisions, including those concerning the statute of limitation and the applicable penalties;

(iii) A copy of any sentence, warrant of arrest or other document having the same force, or of any other legal writ which the State intends to enforce;

(iv) A protocol containing views of the sentenced person obtained after informing the person sufficiently about the proceedings.

(b) In the event of a request for extradition made by another State, the State of enforcement shall transmit the entire request to the Presidency with a protocol containing the views of the sentenced person obtained after informing the person sufficiently about the extradition request.

(c) The Presidency may in all cases request any document or additional information from the State of enforcement or the State requesting extradition.

(d) If the person was surrendered to the Court by a State other than the State of enforcement or the State seeking extradition, the Presidency shall consult with the State that surrendered the person and take into account any views expressed by that State.

Rule 10.19

(a) Any information or documents transmitted to the Presidency under rule 10.18 shall be transmitted to the Prosecutor, who may comment.

(b) The Presidency may decide to conduct a hearing.

Rule 10.20

(a) The Presidency shall make a determination as soon as possible. This determination shall be notified to all those who have participated in the proceedings.

(b) If the request submitted under rule 10.18 (a) or (b) concerns the enforcement of a sentence, the sentenced person may serve that sentence in the State designated by the Court to enforce the sentence pronounced by it or be extradited to a third State only after having served the full sentence pronounced by the Court, subject to the provisions of article 110 of the Statute.

(c) The Presidency may authorize the temporary extradition of the sentenced person to a third State for prosecution only if it has obtained assurances which it

deems to be sufficient that the sentenced person will be kept in custody in the third State and transferred back to the State responsible for enforcement of the sentence pronounced by the Court, after the prosecution.

Rule 10.21

The provisions of rules 10.18 to 10.20 shall apply as appropriate to article 107, paragraph 3.

Rule 10.22

The Presidency shall request the State of enforcement to inform it of any important event concerning the sentenced person, and of any prosecution of that person for events subsequent to his or her transfer.

Rules relating to article 109 (Enforcement of fines, forfeiture measures and reparation orders)

Rule 10.23

For the enforcement of fines, forfeiture or reparation orders, the Presidency shall, as appropriate, seek cooperation and measures for enforcement in accordance with Part 9, as well as transmit copies of relevant orders to any State with which the sentenced person appears to have direct connection by reason of either nationality, domicile or habitual residence or by virtue of the location of the sentenced person's assets and property or with which the victim has such connection. The Presidency shall, as appropriate, inform the State of any third-party claims or of the fact that no claim was presented by a person who received notification of any proceedings conducted pursuant to article 75 of the Statute.

Rule 10.24

The Presidency shall, when transmitting copies of orders for reparations to States Parties under rule 10.23, inform them that, in giving effect to an order for reparations, the national authorities shall not modify the reparations specified by the Court, the scope or the extent of any damage, loss or injury determined by the Court or the principles stated in the order, and shall facilitate the enforcement of such order.

Rule 10.25

The Presidency shall, when transmitting copies of judgements in which fines were imposed to States Parties for the purpose of enforcement in accordance with article 109 and rule 10.23, inform them that in enforcing the fines imposed, national authorities shall not modify them.

Rule 10.26

The Presidency shall, after having consulted, as appropriate, with the Prosecutor, the sentenced person, the victims or their legal representatives, the national authorities of the State of enforcement or any relevant third party, or representatives of the Trust Fund provided for in article 79 of the Statute, decide on all matters related to the disposition or allocation of property or assets realized through enforcement of an order of the Court.

Rule 10.27

The Presidency shall assist the enforcement State, as requested, with the service of any relevant notification on the sentenced person or any other relevant persons, or the carrying out of any other measures necessary for the enforcement of the order under the procedure of the national law of the enforcement State.[86]

Rule 10.28

In all cases, when the Presidency decides on the allocation or disposition of property, assets or money belonging to the sentenced person, it shall give priority to the enforcement of measures concerning reparations to victims.[87]

Rules relating to article 110 (Review by the Court concerning reduction of sentence)

Rule 10.29

(a) For the application of article 110, paragraph 3, three judges of the Appeals Chamber appointed by that Chamber shall conduct a hearing, unless it decides otherwise in a particular case, for exceptional reasons. The hearing shall be conducted with the sentenced person, who may be assisted by his or her counsel, with interpretation, as may be required. Those three judges shall invite the Prosecutor, the State of enforcement of any penalty under article 77 or any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings, to participate in the hearing or to submit written observations. Under exceptional circumstances, this hearing may be conducted by way of a videoconference or in the State of enforcement by a judge delegated by the Appeals Chamber of the Court.

(b) The same three judges shall communicate the decision and the reasons for it to all those who participated in the review proceedings as soon as possible.

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[86] A copy of the reparation order made pursuant to article 75 of the Statute shall be transmitted to the victim concerned. This provision will be confirmed after discussions concerning Part 6 of the Statute.

[87] This provision will be confirmed after discussions concerning article 75 of the Statute.

Rule 10.30

(a) For the application of article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall review the question of reduction of sentence every three years, unless it establishes a shorter interval in its decision taken pursuant to article 110, paragraph 3. In case of a significant change in circumstances, those three judges may permit the sentenced person to apply for a review within the three-year period or such shorter period as may have been set by the three judges.

(b) For any review under article 110, paragraph 5, three judges of the Appeals Chamber appointed by that Chamber shall invite written representations from the sentenced person or his or her counsel, the Prosecutor, the State of enforcement of any penalty under article 77 and any reparation order pursuant to article 75 and, to the extent possible, the victims or their legal representatives who participated in the proceedings. The three judges may also decide to hold a hearing.

(c) The decision and the reasons for it shall be communicated to all those who participated in the review proceedings as soon as possible.

Rule 10.31[88]

In reviewing the question of reduction of sentence pursuant to article 110, paragraphs 3 and 5, the three judges of the Appeals Chamber shall take into account the criteria listed in article 110, paragraph 4 (a) and (b), and the following criteria:

(a) The conduct of the sentenced person while in detention, which shows a genuine dissociation from his or her crime;

(b) The prospect of the resocialization and successful resettlement of the sentenced person;

(c) The prospect that, given the time that has elapsed and the normalization of the social environment in the territory in which the crime occurred, early release of the sentenced person would not give rise to significant social instability or jeopardize reconciliation;[89]

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[88] The following proposal was developed in informal consultations during the March 2000 session of the Preparatory Commission with a view to merging sub-rules (b) and (c) of rule 10.31 above, but there was insufficient time to conclude discussion thereon:

"*Option 1*

"(b) The prospect of the resocialization and successful resettlement of the sentenced person, also in the light of the social environment in the territory in which the crime occurred;

"*Option 2*

"(b) The prospect of the resocialization and successful resettlement of the sentenced person, also in the light of the social environment in the territory in which the crime occurred and in particular of the fact that the early release of the sentenced person would not give rise to significant social instability or jeopardize reconciliation;"

[89] Some delegations questioned whether it was appropriate for the Court to be asked to assess political issues.

(d) Any significant action taken by the sentenced person for the benefit of the victims as well as any impact on the victims and their families as a result of the early release;

(e) Individual circumstances of the sentenced person, including a worsening state of physical or mental health or advanced age.

Rule relating to article 111 (Escape)

Rule 10.32

(a) If the sentenced person has escaped, the State of enforcement shall, as soon as possible, advise the Registrar by any medium capable of delivering a written record. The Presidency shall then proceed in accordance with Part 9 of the Statute.

(b) However, if the State in which the sentenced person is located agrees to surrender him or her to the State of enforcement, pursuant to either international agreements or its national legislation, the State of enforcement shall so advise the Registrar in writing. The person shall be surrendered to the State of enforcement as soon as possible, if necessary in consultation with the Registrar, who shall provide all necessary assistance, including, if necessary, the presentation of requests for transit to the States concerned, in accordance with rule 10.10.

The costs associated with the surrender of the sentenced person shall be borne by the Court if no State assumes responsibility for them.

(c) If the sentenced person is surrendered to the Court pursuant to Part 9 of the Statute, the Court shall transfer him or her to the State of enforcement. Nevertheless, the Presidency may, acting on its own motion or at the request of the Prosecutor or of the initial State of enforcement and in accordance with article 103 and rules 10.6 to 10.9, designate another State, including the State to the territory of which the sentenced person has fled.

(d) In all cases, the entire period of detention in the territory of the State in which the sentenced person was in custody after his or her escape and, where sub-rule (c) is applicable, the period of detention at the seat of the Court following the surrender of the sentenced person from the State in which he or she was located shall be deducted from the sentence remaining to be served.